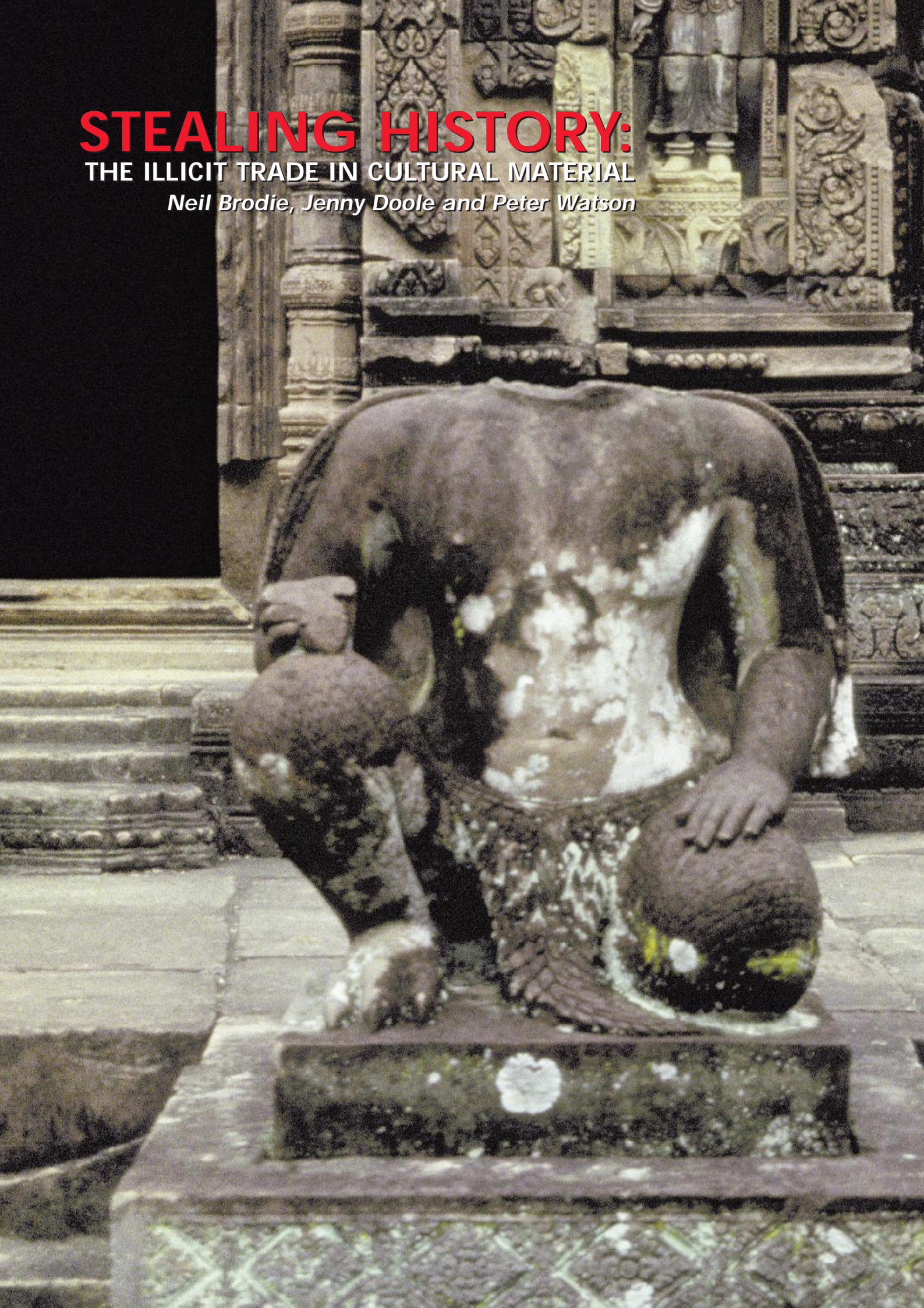


STEALING HISTORY:

THE ILLICIT TRADE IN CULTURAL MATERIAL

Neil Brodie, Jenny Doole and Peter Watson



STEALING HISTORY:

THE ILLICIT TRADE IN CULTURAL MATERIAL

Neil Brodie, Jenny Doole and Peter Watson

Commissioned by:
ICOM UK and Museums Association



2000

Published by
The McDonald Institute for Archaeological Research



The McDonald Institute for Archaeological Research
Downing St
Cambridge CB2 3ER
Tel: 01223 333538 Fax: 01223 333536

ICOM UK
SEMS Office
The Garden Room
Historic Dockyard, Chatham
Kent ME4 4TE
Tel 01634 405031 Fax 01634 840795

Museums Association
42 Clerkenwell Close, London EC1R 0PA
Tel 020 7250 1789 Fax 020 7250 1929
E-mail info@museumsassociation.org

Copyright McDonald Institute for Archaeological Research 2000

ISBN 1-902937-10-4

The report was overseen by a steering group made up as follows:

*Patrick Boylan, Gaynor Kavanagh
Max Hebditch (chair), Louise Smith, Mary Yule*

Cover: Guardian figure, which originally had an animal head, at Khmer temple of Banteay Srei, Cambodia

STEALING HISTORY:

THE ILLICIT TRADE IN CULTURAL MATERIAL

Neil Brodie, Jenny Doole and Peter Watson

This report reveals the illicit exploitation of the world's cultural resources - a destructive and often criminal enterprise. Modern day looting is greater in scale than any carried out in the past, with results that are usually beyond repair. The damage caused to the heritage of humanity and to the history and traditions of living communities is appalling. Action is needed now to stop this plunder.

The report is concerned with items that are being illicitly removed from their original contexts. The focus is on archaeological material, but examples are included from areas as diverse as palaeontology, architectural sculpture and the material heritage of communities throughout the world.

The report does not attempt to discuss the illicit trade in fine art, nor the related issue of the repatriation of items that have been in museum collections for decades, nor Nazi war loot, nor indeed current cases of theft from museum and private collections. The trade in stolen fine art is also now of such a scale, and is so enmeshed with other criminal activities such as money laundering, that like the trade in cultural material, its full investigation would require a separate report.

This report starts with a description of the illicit trade in cultural material, its organisation, the destruction it causes and the role of the art trade in the UK. Legal deterrents and loopholes and the roles of government are discussed next. Finally, consideration is given to what measures might be taken by museums to protect themselves from unwitting participation in the trade and what role they might play in impeding it.

CONTENTS

INTRODUCTION

FOREWORD

by Manus Brinkman, Secretary General of the International Council of Museums	5
--	---

SUMMARY OF RECOMMENDATIONS

<i>Recommendations to Her Majesty's Government</i>	6
<i>Recommendations to UK museum organisations</i>	6
<i>Recommendations for museums</i>	7

1. THE ILLICIT TRADE

1.1 <i>The end of the age of piracy?</i>	8
1.2 <i>Context, Context, Context!</i>	10
1.3 <i>A justifiable trade?</i>	12
1.4 <i>The economics of looting</i>	13
1.5 <i>Criminal aspects of the illicit trade</i>	16
1.6 <i>Fakes and replicas</i>	17
1.7 <i>The scale of the destruction</i>	19
1.8 <i>Looting in the United Kingdom</i>	21
1.9 <i>The financial value of the illicit trade</i>	23
1.10 <i>Conclusion</i>	25

2. THE ROLE PLAYED BY COMMERCIAL ORGANISATIONS IN THE UNITED KINGDOM

2.1 <i>Examining the trade</i>	26
2.2 <i>Sotheby's in Italy</i>	26
2.3 <i>Apulian vases</i>	27
2.4 <i>Sotheby's in India</i>	28
2.5 <i>Sotheby's response</i>	28
2.6 <i>The Salisbury Hoard</i>	29
2.7 <i>Conclusions</i>	29

3. THE LAW AND THE ILLICIT TRADE

3.1 National laws	31
3.2 United Kingdom	33
3.3 International conventions and the UK response	36
3.4 Recommendations to Her Majesty's Government	42

4. MUSEUMS AND THE ILLICIT TRADE

4.1 Codes of Ethics	43
4.2 Acquisitions	45
4.3 Breaking the codes	47
4.4 Museums and the market	48
4.5 Due diligence	49
4.6 Exhibitions and loans	53
4.7 New approaches	53
4.8 PR, sponsorship and marketing	55
4.9 Education	55
4.10 Recommendations for museum organisations	57
4.11 Recommendations for museums	58

AFTERWORD	59
------------------	-----------

ACKNOWLEDGEMENTS	60
-------------------------	-----------

FOOTNOTES	60
------------------	-----------

FURTHER READING	60
------------------------	-----------

DUE DILIGENCE GUIDELINES FOR MUSEUMS	61
---	-----------

(NB. Throughout this report the term 'provenance' is used to mean the 'original findspot' of an item, in its usual archaeological or geological sense. This is distinct from the normal fine-art usage of the term 'provenance', where it is used to mean 'ownership history'.)



*Lorry of Cambodian sculpture looted from the Khmer temple of Banteay Chmar impounded at the Thai border, 1999
Photo: R Thosarat*

FOREWORD

This is a very good report. It is good, because it relentlessly calls attention to one of the most destructive attacks on human heritage. Gradually, inch by inch, we are realising that much of our cultural heritage is being lost as a result of greed or wilful destruction. And slowly but surely we are starting to care.

We hear about a mosque, set on fire in Bosnia and about a bomb attack on an orthodox church in Kosovo. And we are indignant at the brutality. But when we pass by a gallery displaying orthodox icons we do not immediately realise that some, or even many, of them may well have been stolen from churches in Eastern Europe.

We don't hear so much about the temple of Banteay Chmar in Cambodia, cut to pieces with power tools and sold in antique shops all over the world. Outright destruction in war enrages us, but looting and theft are equally destructive and are a real threat to the culture of humankind, exactly as the killing and commercialisation of rare living beings are a threat to the natural environment. It is not a new phenomenon: down the ages warriors have destroyed many monuments and sites and thieves have robbed many tombs. But the scale on which the destruction now takes place is unprecedented.

There is no reason to remain diplomatic. And this report isn't. It gives us all the details and it tells us who is to blame. *'Nobody has to collect illicit material'* is one of its key sentences. It is a shame that all kinds of false arguments are still used to justify buying cultural material that is obviously or probably illicit. Collectors have claimed that the trade in cultural material helps promote a universal appreciation of human creativity, but, as the report clearly states, it is a one-way trade. There are not many Malinese or Cambodian collections with high-quality Tudor furniture or French 18th-century statues.

The solution to the illicit trade in cultural material is not a simple one. Protection of sites, churches and museums; good documentation; a well functioning national and international legal framework; codes of ethics; and education and awareness-raising are all important.

The solution lies ultimately in the hands of the customer, or collector, as the report says. As long as objects are being bought without indication of provenance, they will continue to be offered that way. However, many collectors are still not even vaguely aware of the damage done. A tourist buying a small piece of stone, coming from a vast archaeological site, may think that this one small piece doesn't matter that much. The seller may be of the same opinion. Thus education is important, education in the countries of origin and education in the countries where the buyers come from. Education is not the whole answer, but it is a powerful tool in the struggle.

Museums and museum organisations could do more in this area. Today, museums are much more careful with collecting and buying than they were in the past. There are many examples of guidelines, like the ICOM Code of Ethics, to which they generally adhere. But museums could do more to raise people's awareness of the destructive power of the illicit trade.

This report does just that. And that is why it is exemplary.

Manus Brinkman, Secretary General, International Council of Museums

SUMMARY OF RECOMMENDATIONS

1 Recommendations to Her Majesty's Government

- 1.1. HM Government should proceed to ratify both the 1970 UNESCO and 1995 Unidroit Conventions forthwith. This would:
 - prevent the United Kingdom being used as a market place for material which was, in the first instance, obtained illegally (by, for example, controlling its import). By failing to ratify it can be argued that the United Kingdom condones criminal behaviour abroad.
 - provide a means for reclaiming material exported illegally from the United Kingdom much of which, at the present time, is lost.
- 1.2. HM Government should take steps to make the system for licensing exports of cultural material fully comprehensive, and to improve compliance and data collection. No new legislation is needed. This would:
 - establish the value and pattern of the international trade in cultural material, and so help guide government policy
 - encourage the development of an open market
 - help to protect material originating within the United Kingdom
 - circumvent the need for a list of important cultural property to be maintained as a requirement of implementing the 1970 UNESCO Convention
- 1.3. HM Government should encourage 'transparency' in the trade by requiring that auction houses and dealers record and, when it is in the public interest, disclose the names of individuals or organisations from whom they purchase material.
- 1.4. HM Government should review whether tax benefits should be allowed to accrue to individuals in respect of unprovenanced material, for instance in the Acceptance in Lieu scheme for inheritance tax and the Conditional Exemption scheme.
- 1.5. HM Government should review whether it is appropriate for the Government Indemnity Scheme to continue to cover loans of unprovenanced material to UK museums.
- 1.6. HM Government should proceed to ratify the 1954 Hague Convention, along with the 1999 Second Protocol.
- 1.7. HM Government should resist US pressure at future meetings of the WTO for the abolition of trade controls on cultural material.

2 Recommendations to UK museum organisations

- 2.1. A central advisory point should be set up to advise museums about the necessary export documentation needed to establish that an item has not been exported illegally and to make available the export legislation of all countries. (UNESCO holds copies of relevant legislations from all states party to the 1970 Convention but, in general, such information and advice on its interpretation is difficult to come by.)
- 2.2. Within the museum community there are informal networks of communication. However, these are of limited benefit as many curators are unaware of them. It

would be helpful if a central register of advisers could be established so that, for instance, if information was needed about a particular palaeontological specimen a curator could approach the geology adviser, who could then direct the query to the most suitable authority.

- 2.3 The 'museum of last resort' argument (see Section 4.2) seems to impose a responsibility without at the same time providing clear guidance. The Museums Association, or Society of Museum Archaeologists, should formulate a set of guidelines to be used by museums with small acquisition budgets that are faced with large quantities of unprovenanced material brought to their attention by treasure hunters.

3 Recommendations for museums

The ICOM and Museums Association codes of ethics require that museums should not accept on loan, acquire, exhibit, or assist the current possessor of, any object that has been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in contravention of that country's laws. This is also a requirement of the guidelines for the Registration Scheme for museums in the UK. In practice this means that museums should observe the following (and address appropriate points in their acquisition policies):

- 3.1 Museums should not acquire provenanced items whose accompanying documentation fails to comply with the export regulations of their country of origin, unless there is reliable documentation to show that they were exported from their country of origin before 1970.
- 3.2 Museums should not acquire unprovenanced items because of the strong risk that they have been looted, unless they are following the 'last resort' argument outlined in Section 4.2 or there is reliable documentation to show that they were exported from their country of origin before 1970.
- 3.3 Museums should follow the guidelines on due diligence set out in this report, which should be addressed in their acquisition policies.
- 3.4 Museums should apply the same strict rules to gifts and bequests and loans as they do to purchases.
- 3.5 Museums should avoid appearing to promote or tolerate the sale of unprovenanced material through inappropriate or compromising collaborations with dealers.
- 3.6 Museums should decline to offer expertise on, or otherwise assist the current possessor of, unprovenanced items because of the risk that they may have been looted.
- 3.7 Museums should inform the appropriate authorities if they have reason to suspect an item has been illicitly obtained.
- 3.8 Museums should comply with the 1970 UNESCO and 1995 Unidroit conventions, if legally free to do so.
- 3.9 Museums should seize opportunities to raise public awareness of the scale and destructive impact of the illicit trade.

1. THE ILLICIT TRADE

1.1 THE END OF THE AGE OF PIRACY?

In May 1969, during an acquisitions meeting at the Metropolitan Museum of Art in New York, the then president of the Board of Trustees quickly gained approval for the purchase of a batch of antiquities, later known as the Lydian Treasure, thought to be from a site in Turkey. The meeting may well have questioned the purchase as there was reason to believe that the antiquities had been smuggled out of western Turkey and their acquisition would break Turkish law, although not US law. In the event, however, the purchase went through unopposed. And, indeed, why not? It was not particularly controversial. Only a couple of years earlier the Boston Museum of Fine Arts had bought a collection of gold jewellery, also thought to be from Turkey, and in the modern world this was how museums, particularly in the United States, built up their collections. If it was legal it was ethical. It was the material that counted, not the manner of its first acquisition. Yet in 1993, after a prolonged lawsuit, the Metropolitan was forced to hand back the material to Turkey and received no compensation in return. What had happened in the meantime? Why did such an unremarkable purchase become the subject of controversy and object of shame - an expensive and embarrassing mistake?



Gold spool from the Lydian Treasure

The background

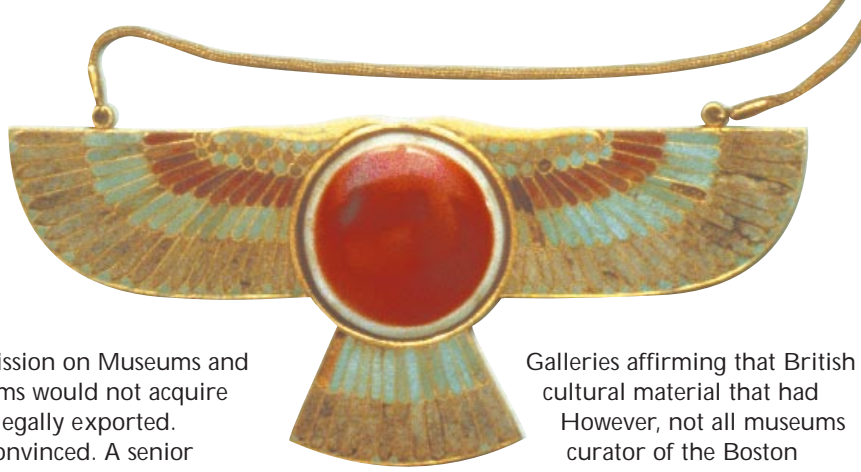
During the late 1960s frustration was mounting as archaeologists tried to make sense of the material then pouring into museums. 'Treasures' such as those bought by Boston and the Metropolitan raised more questions than they answered. Were the objects in the Lydian Treasure really all found together, or were they assembled by a dealer and passed off as a coherent find solely to increase their value? Just where exactly had they been found anyway? Was it really Turkey, really the west? Where had they been deposited? One grave? Two? Half a dozen? A sanctuary, a house or a hole in the ground? What else had been present with the valuables now in the museums, but not precious enough to be retained? What pots, stones and bones? There was a growing realisation that unprovenanced museum acquisitions provided fertile ground for unverifiable and thus sterile speculation, but were of little use for productive research.

Archaeologists were also becoming concerned about the increasing amounts of damage being caused to archaeological sites by looting aimed at recovering valuable antiquities for sale to museums and collectors in Europe and North America. They began to question the role played by western museums in supporting the market and thus, even if only indirectly, in contributing to the ongoing destruction.

At the same time there was a growing awareness in countries around the world that their cultural heritage was being plundered at an ever quickening rate. The laws of many countries were being broken or ignored, and there was no redress. The Metropolitan might find it convenient not to question the source of the Lydian Treasure, but to the Turkish government its illegal excavation and export was an attack on the history and sovereignty of the state.

The ethical revolution begins

In 1970 everything changed. The International Council of Museums (ICOM) issued an influential statement on the ethics of museum acquisitions and in April of that year the Museum of the University of Pennsylvania announced, in what has since come to be known as the Pennsylvania declaration, that it would no longer acquire an antiquity without convincing documentation of its legitimate pedigree. The Harvard University museums followed suit in 1971 and the Chicago Field Museum of Natural History in 1972. In the same year John D Cooney, curator of ancient art at the Cleveland Museum, announced publicly his belief that 95% of all antiquities in the United States had been smuggled, while in the United Kingdom a joint declaration was issued by the Museums Association, the British Academy, the British Museum and the Standing



Pectoral necklace of gold and cloisonné from the Lydian Treasure

Commission on Museums and museums would not acquire been illegally exported. were convinced. A senior Museum of Fine Arts, which to of unrestricted collecting, argued that it was all very well for Pennsylvania, with its active programmes of field research, to withdraw from the market, but for Boston, with no tradition of fieldwork, acquisitions on the open market were essential for its further development.

Galleries affirming that British cultural material that had However, not all museums curator of the Boston this day continues with its policy

The Pennsylvania declaration was followed in November 1970 by the adoption by UNESCO of the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, the title of which is self-explanatory. Sadly, the government of the United Kingdom refused to ratify the convention, and continues to refuse to do so (see Section 3.3).

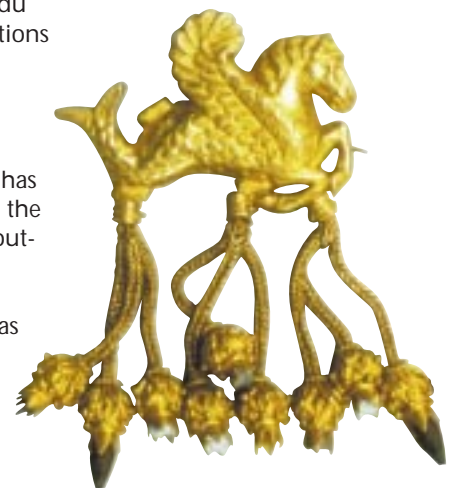
Although the UNESCO Convention does not place any legal obligations on museums in countries which are not signatories, its provisions have been incorporated into the ethical codes of relevant professional organisations, including those of the Museums Association in the United Kingdom and the International Council of Museums. Thus museums are now under an ethical obligation to act in accordance with the convention and its provisions. Crucially, museums must not acquire material illegally exported since UNESCO adopted the convention in 1970. Whatever its status in law, the 1970 UNESCO Convention changed forever the ethical landscape of the museum world. Thomas Hoving, director of the Metropolitan at the time of the Lydian purchase preferred a more colourful analogy: 'the age of piracy has ended'.¹

The situation now

Or had it? Since 1970, although the morality of the black market in cultural material has been questioned by most and condemned by some, it continues to thrive. Museum customers may be fewer in number but they persist, and they have been joined by a new breed of private collector – the speculator – interested in monetary rather than historic value. The increasing numbers of 'culture consumers' and the reduced barriers to communication and transport have combined to open up new markets, and cause more destruction. In recent years the illicit trade has been marked by:

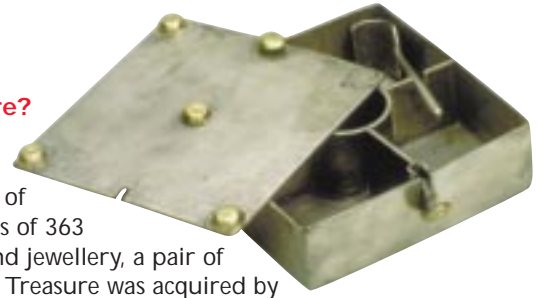
- The opening up of Asia and Africa, and the appearance on the market of large quantities of material from these areas.
- A greater interest in ethnographic material.
- The targeting of previously immune religious monuments. Buddhist and Hindu temples of Asia are vandalised while in Europe Christian churches and institutions are stripped of their icons and frescoes.
- The reappearance of a trade in palaeontological material.
- The use of improved means of detection and destruction. The metal detector has found its place alongside the long probing rod of the Italian tomb robber and the car aerial of the American pot-hunter. Bulldozers, dynamite and power tools out-perform picks and shovels.
- The appearance of new ways of marketing and selling cultural material, such as mail-order catalogues and Internet auctions. Internet sales in particular have opened the market to millions of potential new customers and are virtually impossible to police.

Gold pin with acorn tassels from the Lydian Treasure



Right: Silver cosmetic box with gold studs, and silver spoon

Below: Silver alabastron from the Lydian Treasure



But what happened to the Lydian Treasure?

The Lydian Treasure had been looted early in 1966 from several Iron Age burial mounds in western Turkey. Thought to date from the age of the legendary King Croesus of Lydia, it consists of 363 objects which include gold and silver vessels and jewellery, a pair of marble sphinxes and some wall paintings. The Treasure was acquired by the Metropolitan Museum over the period 1966-70 from John Klejman of Madison Avenue and the Swiss dealer George Zacos. The Metropolitan knew at the time of its purchase that the material had been looted and exported illegally - a junior curator had been to Turkey and visited the looted site, and had managed to identify the matching parts of a pair of sphinxes held by the museum - and did not mount a display until 1984, when the material was exhibited without provenance under the misleading title of the East Greek Treasure. Its hesitation was in part prompted by the international outcry which had greeted the Boston museum's inclusion of their own illegally exported Turkish gold in an anniversary exhibition of 1970. The Metropolitan didn't exhibit its hoard until things cooled down - the climate of opinion as much as its purchase.

In the meantime the Turkish authorities, who were aware that a large quantity of material had been moved out of their country, had arrested and interrogated the looters. From descriptions provided during the interrogation they were able to recognise some of the material illustrated in the Metropolitan's 1984 display catalogue. In 1986 Turkey formally demanded the return of the Treasure, and in 1987 filed a lawsuit against the Metropolitan.

The Metropolitan failed to do the decent thing. Although caught red-handed and with deeply incriminating documentation in the museum's files, it went to court in an attempt to change the State of New York's rules about the period of time in which a claim for stolen property is allowed to proceed, hoping to keep possession. But in 1990 its case was dismissed. A team of Turkish and American archaeologists was allowed to examine relevant material and documentation in the Metropolitan. In 1993 the museum finally agreed to return the Treasure and the lawsuit was dropped. The Metropolitan had bought the Treasure for about \$1.5 million, the cost of their court case has not been disclosed. It was an irresponsible waste of money. If such a situation was to arise in the UK then the trustees who authorised the purchase might find themselves personally liable for the financial loss incurred by the museum.

1.2 CONTEXT, CONTEXT, CONTEXT!

Throughout the 19th and even much of the 20th century, amateur and commercial collectors and dealers helped stimulate the development of the modern disciplines of anthropology, archaeology and geology. But it was with the recognition of the importance of context - the social or stratigraphical relationships of the collected objects - that these disciplines moved beyond connoisseurship to reach their present state of development. The interests of scholars and the market began to diverge, although it might be argued that it has taken several decades for the consequences of this divergence to fully manifest themselves.

An object and its context together, when properly recorded and interpreted, can reveal much more than either one in isolation. An apparently unimportant antiquity, for instance, might acquire great significance if it can date associated material or features, or is found far removed from its usual area of distribution. Thus sherds of mass-produced Roman pottery are, by themselves, of



little interest, but when they are found *in situ* during an archaeological dig in India they cause a great deal of excitement. They help to date the site and at the same time cast light on its trade relationships.

Even the original findspot of a piece, its provenance, can be important, provided that it is reliable. It is a minimal context. Attributions such as 'said to be from...' are worse than useless. They engender a feeling of certainty, a feeling that something is known about a piece when, in reality, it is not. 'Provenance undisclosed' would be a more accurate, and rather more telling, qualifier.

Context means information

It is also possible to extract information about past climates and environments from properly contextualised palaeontological and archaeological specimens, which have become a valuable resource as concerns grow over global warming and increasing levels of pollution. For example, oxygen isotope levels in the shells of stratified foraminifera microfossils reflect past levels of ocean salinity and thus degree of glaciation. In York, pollution of the River Ouse over the past 1,900 years can be demonstrated from changes in the species of fish and molluscs found in dated archaeological contexts.

Improving scientific techniques continue to increase the importance of context. For centuries pots have been rigorously cleaned to reveal their shape or decoration – their aesthetic qualities – which determine their price on the market. But now chemical and microscopic analyses of their residual contents can reveal much about their past contents – ancient food or trade goods. A recent cover of the scientific journal *Nature* carried the headline 'Feasting on Midas's Riches' and inside reported chemical analyses of residues preserved in bronze bowls from an eighth-century BC tomb in Gordion, central Turkey – the time of the legendary King Midas.² The analyses revealed the remains of a great funerary feast – a spicy meal of sheep or goat washed down with a potent brew of barley beer, wine and mead. How many illicitly-traded pots or metal vessels are so examined? When the adhering soil is washed off a looted pot to reveal its financially valuable surface, how much information about ancient society is lost?

Ethnographic material too has a context: the function and meaning that an object has in the society from which it is acquired. During colonial times, when many ethnographic collections were assembled, such details were rarely recorded; objects were collected for the quality of their craftsmanship or for their beauty. In consequence, these collections often reveal more about the collectors themselves – their tastes and prejudices – than the people and societies from which they collected. It is clear now that the significance of an ethnographic item is enhanced greatly when it is accompanied by oral or written testimony concerning its use or meaning. Indeed, today, sound and video recording are often an essential part of an object's documentation.

The human right to heritage

An ethnographic object without contextual information is an object stripped of meaning – it reflects back at us our own conceptions of beauty but tells us little of other people and other places. It leaves us ignorant of its original social value and purpose or, worse, puts us at risk of misunderstanding them. For the society that produced such an object – removed from its traditional setting of worship and care – it might be an act of desecration. The fundamental right of a people to their cultural heritage has been denied.

Archaeological remains are often vital for the rediscovery of a people's history while 'ethnographic' material provides a visible and easily accessible reminder of a people's

An ethnographic object without contextual information is an object stripped of meaning

The destruction of cultural heritage should be treated as a violation of human rights

traditions and accomplishments. Their removal steals from a people part of their identity, part of their collective psyche. In view of this some have argued persuasively that the right to a cultural heritage is a fundamental, human right. Consequently, the destruction of cultural heritage should be treated as a violation of human rights.

1.3 A JUSTIFIABLE TRADE?

The illegal removal of objects from their country of origin, and the damage caused by their removal from their original contexts cannot be defended. However, some persist in trying to justify the illicit trade. US antiquities dealer Torkom Demirjian for instance was recently reported as saying 'Archaeological considerations are no longer paramount; now there is increasing emphasis on aesthetics over rarity'³ Here are some of the arguments used to support statements such as that attributed to Demirjian.

- Some collectors have claimed that the trade in cultural material helps promote a universal appreciation of human creativity, and in so doing engenders mutual respect in our diverse and often divided world. The trade, it is argued, is thus a force for good.

But it is a one-way trade. Cultural objects are illicitly moved from south to north, from east to west, from the third and fourth worlds to the first, and from poor to rich. There is no countervailing flow. As the collections and museums of Europe and North America begin to accumulate looted Djenné terracottas from Mali for instance or Khmer sculpture stripped from the temples of Cambodia, their counterparts in those countries do not benefit from acquisitions of the treasures of, say, Ancient Greece or Rome. The illicit trade in cultural material is not a force for international harmony and understanding, it promotes division and resentment.

- Most, if not all, collectors (and some academics and curators too) regard antiquities as works of art. They argue that regardless of their origin they should be put on display for all to see and appreciate – a celebration of human artistic genius that transcends time and space. 'Isn't there a dimension to art that is much more worthwhile than the pursuit of context?' asks George Ortiz, a major collector of antiquities.⁴ Ethnographic material, too, is often seen in this light (although interestingly no African language contains a word, or group of words, which equate to the western concept of art) – and so-called 'decor fossils' are collected because they delight the eye.

Lorry of Cambodian sculpture looted from the Khmer temple of Banteay Chmar impounded at the Thai border, 1999
Photo: R Thosarat



Of course, art is in the eye of the beholder, but claims of art cannot be allowed to justify destruction and illegal looting. Many objects marketed as works of art have been ripped from historical buildings or monuments. The method of their acquisition has often entailed the *destruction* of artistic or architectural masterpieces.

In Cambodia decorative friezes and sculptures are being sawn off Khmer period temples. A single lorry stopped on the Cambodian-Thai border was found to contain 117 sandstone carvings from the 12th-century AD temple of Banteay Chmar. One Bangkok dealer was offering a loot-to-order service for parts of this temple. During the sustained looting raid, so much material was chainsawed from the walls that the temple is now on the brink of collapse. Paradoxically, at the remote temple of Banteay Srei, described as a 'jewel of Khmer art', the faces have been hacked from most of the outstanding carvings to supply collectors who argue they *appreciate* art.

KANAKARIÁ MOSAIC

The church of the Panagia Kanakariá at Lythrankomi in northern Cyprus was built in the sixth century AD, when Cyprus was still part of the Byzantine Empire. The ceiling of its eastern apse was decorated with a brightly coloured mosaic depicting the Virgin holding the Christ child, flanked by two archangels, and bordered by the heads of the Apostles. Down through the centuries the mosaic survived earthquakes and invasions until sometime in the late 1970s when it was unceremoniously hacked out, figure by figure, and smuggled off the island. Two pieces were recovered in 1984 but nothing was heard of the remainder until 1988 when in Geneva airport two satchels containing one million dollars in \$100 notes were handed over in exchange for four further fragments, including the top half of the Christ child, now cut in two. Once back in the United States however when their new owner the art dealer Peg Goldberg tried to sell them, the provenance of the pieces was exposed and in 1989 the Cypriot Church sued successfully for their return.

The Kanakariá mosaic was composed using numerous small tesserae of coloured glass and stone, some capped with silver and gold, which were set slightly out of alignment so as to catch and reflect the light at different angles. This clever technique imbued the mosaic with a semblance of life. In the shadowy candle-lit church it would glint and shimmer, the expressions on the faces portrayed would shift and seem to come alive. When they were torn from the church ceiling, however, they were pressed flat for easy transport, and further damaged in transit. On arrival in the United States attempts to 'restore' the mosaics destroyed the original settings of the tesserae and the brilliance of the colours was dimmed by a thin film of adhesive and filler. The damage caused is such that the mosaics will never again be seen in life on the ceiling of the Panagia Kanakariá. They rest now in a Cypriot museum. It seems ironic that to supply the art market, the artistic genius of the mosaic was destroyed forever.



Saint figure from the Kanakariá mosaic before looting and dimmed and damaged after looting

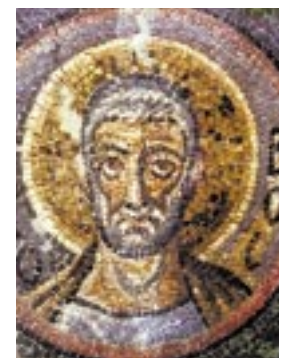


Photo: Department of Antiquities, Cyprus

1.4 THE ECONOMICS OF LOOTING

The illicit trade has also been justified on the grounds that it brings economic benefit, that the purchase of cultural material injects hard currency into hard-pressed local economies. But local people usually receive very little in return for destroying their cultural inheritance. Furthermore, asset-stripping the finite resource of cultural heritage is, by definition, unsustainable in economic terms.

Profit margins

Over the years a number of cases of illicit trading have been investigated, usually when a valuable 'treasure' has been reclaimed or its status questioned, and several exchange chains have now been revealed. They provide some information about the sums of money that change hands and the profit margins involved, and for that reason they are collected together here and summarised in Figure 1, which shows what percentage of the final market price was received by the original finder/excavator/thief. It is clear that in all cases over 98% of the final price was destined to end up in the pockets of the middlemen; the original finder received very little and the final buyer can hardly claim to have obtained a bargain. These percentages are not unusual; it has been estimated, for instance, that in the Petén region of central America looters receive about \$200-\$500 each for vessels which might ultimately be sold for \$100,000.

The introduction to a catalogue of Nigerian Nok and Sokoto terracottas exhibited in Luxembourg pointed to the investment opportunities offered by Africa's rich cultural traditions. The situation with palaeontological specimens is no better. A fossil turtle

	% of price	% of price received by middlemen
Stature of Marsyas	1.4	98.6
Achyris Phiale	1.7	98.3
Euphronius Krater	0.9	99.1
Morgantina Acroliths	0.1	99.9
Song Dynasty Head	0.7	99.3

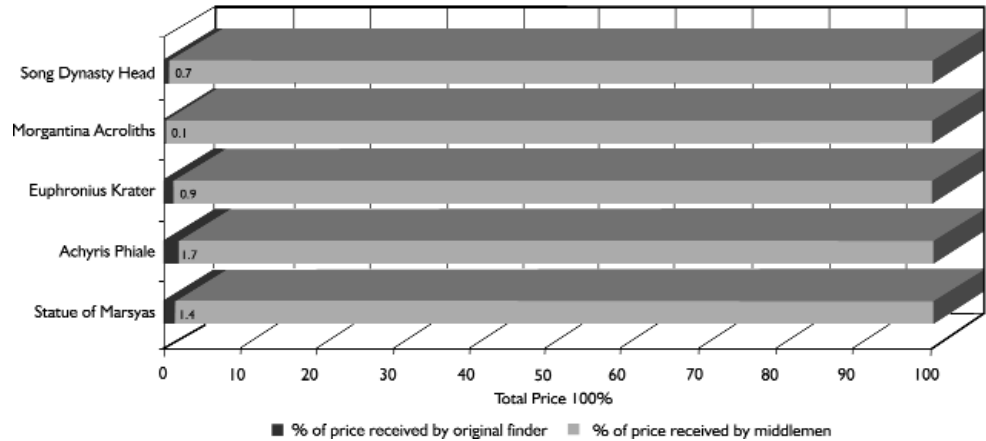


Figure 1
The percentage of the final market price of an antiquity received by the original finder

bought from its finder in Brazil for \$10 fetched \$16,000 when sold in Europe while a landowner in the United States accepted \$2,000 for a late Cretaceous Ankylosaur which was subsequently sold for \$440,000.

Exploiting non-renewable cultural resources

These figures reveal the simple truth of the illicit trade – there are large sums of money to be made, very little of which ever reaches the original finders. But the story does not end there. Once commodified on the western market, objects continue to circulate, for years, even centuries perhaps, and to generate money in transaction after transaction. None of this money goes to the original finders or owners, or their descendants, who might continue to live and work in poverty, with their initial money long spent and their resource worked out. And this latter point is critical. Sometimes it is pointed out, with some justification, that what is considered a small sum in the west might be a substantial amount in a hard-pressed subsistence economy, and no-one could complain of people selling pots or fossils if it helped feed their families. But if culture or environment is regarded as an economic resource then selling it abroad is a poor strategy of exploitation. Cultural heritage is, after all, a non-renewable resource.

In the long-term, looting undermines the economic base of a community

On the Kenyan coast the situation is quite different. Looters are less active and archaeological remains are carefully curated. In the year 1988-89, of the nearly 250,000 people who visited coastal museums and monuments at least half were tourists, with foreign currency to spend. And the tourists come year after year. The development of cultural tourism has been, and continues to be, of significant benefit to the Kenyan economy. A similar picture emerges at the badly looted but now carefully excavated site of Sipán, in Peru. In 1987, prior to the excavation, tourists were virtually unknown in the local town of Chiclayo, but as a result of the fabulous archaeology now displayed there, tens of thousands visit every year, injecting an estimated \$14 million into the local economy – every year. Long-term cultural tourism is bringing far more benefit than the one-off payment the looters (a single family) are reported to have earned from their find (see box).

The purchase of looted antiquities is not a humanitarian act. In the long-term, looting undermines the economic base of a community just as surely as it depletes its heritage.

SIPÁN

In 1987, experienced looters tunneled into a massive mud-brick pyramid near Sipán, north western Peru, and happened upon a magnificently rich burial, dating to the pre-Inca Moche period (800-200BC). They set in chain a series of events which would culminate in the biggest ever seizure of illicit antiquities in the USA.

By the time archaeologists arrived at the site, sacks of grave goods had already been removed. Under armed guard, archaeologist Walter Alva began a rescue excavation. He faced intense hostility from the local population who saw the riches in the pyramid as their birthright, left to them by their ancestors in wealthier times. The excavation uncovered a further series of royal tombs and for the first time ever archaeologists had the opportunity to examine unlooted royal Moche burials. This one opportunity improved our understanding of the culture, galvanised Peruvian archaeology and attracted world attention. Gradually, through a series of bold educational campaigns the local population were won over. The ancient 'Lords of Sipán', as they are now known, *have* proved a rich birthright for the whole community, bringing tourists in ever greater numbers to the site and the innovative museum created nearby. Educational programmes in the museum and local communities use diverse means such as CD-ROMs, comic books, television and community projects to spread the message of the value of archaeology and the damage caused by looting.

As well as the marvellous finds from the scientific excavation of the Sipán, a few of the grave goods ripped from the looted tomb are displayed in the museum. These were voluntarily returned to Peru by eminent American collectors and museums, having been originally confiscated by US authorities purportedly under the terms of a bilateral agreement implemented specifically to protect the Sipán material. But court actions were unsuccessful in securing the return of the rest of the material seized. It is believed that 90% of what was taken remains in private collections around the world. Objects were smuggled out via a variety of routes and continue to surface in places as diverse as Sotheby's New York saleroom, museums and the parking lot of a Philadelphia hotel.

- Hundreds of objects from Sipán were smuggled to London, then re-exported to the USA as personal effects inherited from a fictitious, recently deceased explorer/collector, which meant the smugglers need not declare what was being imported to US customs authorities. With this dubious provenance they were sold to collectors and museums, some of whom had reportedly already placed advance orders before the material was imported into the USA.
- In 1998, a spectacular gold back-flap, ceremonial armour ripped from the body of the warrior-priest in the looted tomb, then hidden in Peru for years, was seized by the FBI in Philadelphia after undercover agents offered \$1.6 million for it. Two Miami men were convicted and a Panamanian consul general was charged with smuggling the piece to New York in a diplomatic pouch.
- Again in 1998, a group of ten objects from Sipán were returned to Peru. They had been found among 200 other artefacts at Miami International Airport in a crate labelled 'Peruvian Handicrafts' during a routine search for illegal drugs. The shipment contained only the highest-quality artefacts, representing nine different Peruvian cultures and clearly was the result of organised, systematic looting. They were en route to Zurich. Swiss police declined to take action and Peruvian authorities never located the person in Lima whose return address was on the crate.

Sipán is an important case study because it enables archaeologists and law enforcement officers to reconstruct in detail the looting process and subsequent smuggling routes. It demonstrates both the effectiveness and shortcomings of bilateral agreements in stemming the illicit trade. We can also see the impact that educational programmes and tourism can have on local communities where looting is a way of life, and get an idea of how much archaeological information has been and is still being lost.



Photo: Proyecto Tumbas Reales de Sipán

Gold head with eyes of lapis lazuli looted from Tomb 1 at Sipán and reportedly offered on the black market for \$60,000

The area around the modern village of Sipán, pitted with thousands of looters' holes



Photo: National Geographic

The emergence of drug gangs and the link between money laundering and antiquities is a sinister development and the situation is gradually deteriorating

1.5 CRIMINAL ASPECTS OF THE ILLICIT TRADE

Drugs and dirty money

Another aspect of the illicit trade in cultural material is its relationship with the market for illegal drugs. Beginning two or three years ago, reports started to appear that the gangs dealing in drug smuggling, and money laundering, were also dealing in antiquities. This information has come from all over the world:

- In January 1999, Spanish police broke up a smuggling ring that had been planning to trade stolen art and antiquities for cocaine.
- A smuggler's plane, arriving in Colorado from Mexico, carried 350lbs of marijuana from Western Chiapas and many thousands of dollars-worth of Pre-Columbian antiquities.
- Heroin, arms and antiquities are now regularly seized along one of the more well-known routes by which Gandharan sculptures leave Afghanistan for Russia and the West.
- In Guatemala and Belize, secret airstrips in the rain forest have been discovered from where cocaine and Mayan stelae are flown to Miami and other US cities.
- Miami has become a crossroad for illicit antiquities — from Ireland, Peru, Guatemala, Mexico and Greece — precisely because, according to US Customs, there is so much 'dirty money' swirling around in the city.⁵ Drug profits pay for the antiquities, which are sent for auction so as to obtain a good pedigree for the cash.

Violence

The emergence of drug gangs and the link between money laundering and antiquities is a sinister development and the situation is gradually deteriorating.

- A British graduate, Ian Graham, now of the Peabody Museum at Harvard in the United States, has been photographing Mayan sculptures *in situ* in Central America for the past 30 years, mindful of the fact that, at some stage, it might be necessary to prove from where these objects — so easily stolen — had been removed. Beginning in 1998, Graham came up against violent gangs who were so intent on taking Mayan objects that they posted look-outs, in make-shift observation posts at the top of palm trees, to scare away anyone who was too inquisitive.
- In 1998 two guards at Guatemalan sites were killed at their posts.
- In one attack on the Angkor storehouse in the early 1990s a guard was shot dead by rocket-wielding bandits.

Corruption

The police of many countries are also concerned about the illicit trade because the large but undeclared sums of money that change hands during transactions can foster corruption in what are often impoverished bureaucracies. Yet in the bizarre logic of the illicit trade this corruption is often used to excuse further criminal behaviour. If government officials or employees can be bribed, so that the law is disregarded by those responsible for its administration and enforcement, why should a foreigner be expected to behave any differently? But this argument confuses cause and effect. It is the large sums of money introduced by the illicit trade that corrupt.

It is not only the poorly paid, and often outgunned, officials of the market countries

who turn a blind eye. It has been reported on more than one occasion that antiquities are moving out of Jordan, Peru, Iran and Nigeria with the personnel of western embassies, sometimes as souvenirs, sometimes in diplomatic bags. And diplomatic 'bags' can be large. A dealer in India using such a method shipped out a container load of antiquities when a diplomat was moving house.

1.6 FAKES AND REPLICAS

Fakes are a hazard of the illicit trade. With no recorded findspot it is left to the eye of the buyer (or the hired help) to decide what is fake and what is not. Yet the Getty kouros (see box) shows that even the most discerning of eyes cannot be relied on. Fakes are designed to fool the expert and clever forgers have many techniques at their disposal – from simulating the accretions of grime and soot that may build up on an object stored for decades in the rafters of a smoky village hut, to smearing pots with mud from genuine archaeological sites. One Mexican forger was so successful that he was arrested and accused of looting Pre-Columbian sites. He was released only after a demonstration of his craft.

In many parts of the world accurate replicas are produced for legitimate export, complete with carefully applied signs of age, but they then enter circulation as genuine artefacts. When Chinese archaeologists visited the United Kingdom in 1998 to reclaim stolen archaeological material that had been seized by British Customs five years earlier they rejected about 20% as fakes or modern replicas. This suggests that perhaps a similar proportion of unprovenanced Chinese material currently entering the market is also fake.

- In the middle 1960s doubts were voiced about the authenticity of the large number of 'Hacilar style' vessels and figurines from south-west Turkey that were appearing on the market. It was pointed out that stylistically they could be distinguished from material known to have been excavated from the site of Hacilar, and thermoluminescence testing then went on to show that 48 out of a sample of 66 figurines tested were recent forgeries. The reliability of interpretations based on a largely faked corpus was called into question.
- Similar doubts have been voiced about the authenticity of early Bronze Age marble Cycladic figurines, which again are largely without provenance. For the past 15 years there has been a strong fashion among collectors for these figurines, the austere, clean lines of which accord very much with contemporary taste. There is not much Cycladic material available but, of those figurines that have been legally excavated by professional archaeologists, most are female and nearly all are of modest size, up to 15-18 inches. On the other hand, many very much larger figurines appear on the market without any published provenance, and along with these are 'special' figurines including males and seated figures which are exceedingly rare from proper archaeological contexts. The real question is whether or not these large and 'special' figurines without provenance are genuine. There is no scientific way of testing the marble of Cycladic figurines, so we are reliant on the traditional skills of connoisseurship. But the possibility cannot be excluded that most or even all the large figurines which have appeared on the market over the past 50 years, and most or all of the 'special' figurines and the males appearing over the same period are fakes. But although in scholarly circles doubts remain, buyers and sellers seem unconcerned and the market remains buoyant.
- In February 1999 a Chinese 'bird' fossil was bought for \$80,000 at a show in Tucson, Arizona for the Dinosaur Museum of Blanding, Utah. It was hailed as a new species – christened *Archaeoraptor liaoningensis* – but computerised tomography later revealed it to be an elaborate fake. The tail of a primitive bird had been

added to the body of a dinosaur in order to fabricate a 'missing link' early in the evolution of birds from dinosaurs. It is now thought that the fossil was smuggled out of the Liaoning area of north-east China. Museum trustees insist that it was exported legally, but have failed to produce any documentary evidence in support of their claim. Nevertheless, the museum has announced its intention to return the fossil to China in summer 2000.

Professional collusion

In the absence of a verifiable provenance, which comes only from a properly recorded context, authentication takes place by expert opinion or scientific test. This generally means that a recognised authority or laboratory is consulted, for a fee. And such individuals or facilities are usually to be found in museums or universities. The Research laboratory for Archaeology and the History of Art at the University of Oxford was roundly condemned in the early 1990s for using thermoluminescence dating to authenticate illegally-exported Malian ceramics. The money so obtained was used to support legitimate research. This is an often repeated reason for undertaking work on illicit objects but only demonstrates the distorting influence that the market has, when individuals or institutions are motivated by money to make a decision which might not be in their best interests and which, on reflection, they might regret. The Oxford laboratory was publicly embarrassed and has now stopped commercial thermoluminescence testing. Perhaps other institutions continue? It would certainly be possible to name academic figures who have recently authenticated unprovenanced material – they have, in effect, hired out the authority of their name. The entry of illicit material on to the market should not be facilitated by 'experts' who sell their authority or expertise to screen out the fakes and maintain market confidence. Indirectly, whatever their motives, they would be condoning the looting.

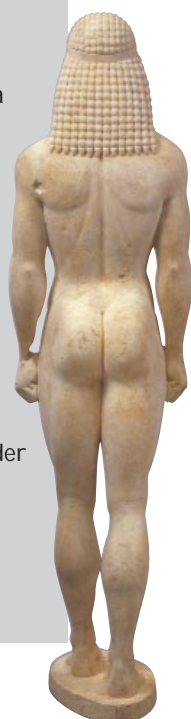
As long ago as 1971 at the annual meeting of the Society of American Archaeology Professor Clemency Coggins stood up and pointed out that '...the money now involved in what used to be a relatively innocuous trade has turned the scholar... into an accomplice.'⁶ So when, in the catalogue of his collection, George Ortiz castigates archaeologists Colin Renfrew and Lauren Talalay for refusing to describe his unprovenanced Neolithic Greek material⁷, and accuses them of taking an ideological stance, he is confusing ideology with morality. They had simply refused to be complicit.

The Getty kouros

In 1983 the J Paul Getty Museum bought a marble statue – known as a kouros – dating to the sixth century BC, from a dealer in Switzerland for a sum of money reported to be in the region of \$8 million. The provenance was not known but its accompanying documentation included a letter reporting its presence in a collection in 1952, thus apparently showing it had been exported before the 1970 UNESCO Convention and therefore making it an ethically legitimate purchase (see Section 1.1). The letter was subsequently shown to be a fake as the post code on its letterhead did not exist before 1972. The authenticity of the kouros itself had by then already been widely called into question, with some experts denouncing it as a modern fake.

In 1992, the Getty sponsored an international meeting in Athens to consider the question, but the 19 invited speakers – including art historians and scientists – could not reach a unanimous agreement. Professor Vassilis Lambrinoudakis concluded that: 'The question of authenticity of the Getty Kouros cannot be answered in a satisfactory way by the means we have available today.'⁸

Photo: The J Paul Getty Museum, Malibu, California



1.7 THE SCALE OF THE DESTRUCTION

The illicit trade in cultural material is clandestine, it is hidden from view. It is, in consequence, difficult to quantify the damage caused worldwide by theft, despoliation and illegal excavation, or to assign value or structure to the market. There are very few facts and figures; discussions often rely on anecdote and assertion and, as a result, concerns expressed about commercial looting may be dismissed as scaremongering by collectors or dealers. But the opacity of the trade is not a predetermined or natural condition, it is maintained artificially by dealers and traders for what might be the usual commercial reasons (their position in the market depends on maintaining a distance between buyers and sellers), or perhaps even to obscure the distinction between legitimate and illegitimate material.

Nevertheless, there are some facts and even, occasionally, some figures. These are presented here:

- In Italy, archaeological sites are being destroyed at an alarming rate. As early as 1962 a survey of a single Etruscan cemetery at Cerveteri showed that 400 out of 550 tombs had been looted since the end of world war two. Between 1970 and 1996 the Italian police recovered more than 300,000 antiquities from clandestine excavations; these must constitute only a portion of the total. In January 1997 Swiss police sealed four warehouses in Geneva Freeport which were found to contain approximately 10,000 antiquities from sites all over Italy. They were valued at about £25 million. Then, late in 1998, a police raid on a villa in Sicily revealed more than 30,000 Phoenician, Greek and Roman antiquities, worth more than £20 million, thought to have been taken from the ruins of Morgantina, in central Sicily.
- In Latin America during the 1960s Mayan monuments in Mexico, Guatemala and Belize were being cut up and sold, often to museums in the United States. During the 1970s the looters turned to graves for pottery and other grave goods. The illicit trade in grave goods has continued through to today and it is thought that about 1,000 pieces of fine pottery, worth about \$10 million, are smuggled out of the Mayan region of Central America each month. One site – Site Q – is known only from looted sculptures in various museums and private collections, its location remains a mystery. In the early 1970s a single Italian dealer somehow managed to remove illegally from Ecuador nearly 12,000 antiquities, where hundreds of sites had been damaged. From a study of abandoned looters' camps in Belize during the 1980s it was estimated that at any one time there might be as many as 200 looters at work in the country compared to only 50 archaeologists. The Mexican

***Mechanical diggers looting an ancient cemetery in southern Italy
Photo: Soprintendenza Archeologica della Puglia***



Photo: Michel Brent

Looting in Mali

government has announced that 1998 alone saw over 10,000 looted artefacts recovered by the authorities, many from abroad.

- The situation in Turkey is no better. Between 1993 and 1995 there were over 17,500 official police investigations into stolen antiquities. A recent document released by the Turkish government lists antiquities smuggling as the fourth largest source of illicit income, after arms and drug smuggling and fraud.
- Raids on an antiquities dealer carried out by German police in Munich during 1997 recovered 50-60 crates full of material ripped from the walls of north Cypriot churches, containing 139 icons, 61 frescoes and four mosaics.
- Churches are also under attack in Bulgaria where 5,000 icons disappeared in a single year (1992).
- A survey in the Charsadda District of northern Pakistan showed that nearly half of Buddhist shrines, stupas and monasteries had been badly damaged or destroyed by illegal excavations for saleable antiquities. Some were bulldozed. In other areas of north Pakistan the story is the same.
- In Nigeria during the 1990s more than 400 cultural objects were stolen from museums and other cultural institutions. But it didn't stop there. The continuing pillage of the country's archaeological heritage reached such a scale that the market price of the two-millennia-old Nok terracottas plummeted.
- Looting in Mali has become an international scandal. Mali has more archaeological sites than anywhere else in Africa outside of Egypt, but only a handful have been properly investigated. A recent survey of 125 square miles discovered 834 sites but also showed that 45% have been looted, 17% badly. Particularly renowned are medieval terracotta statues, but of the hundreds presently in museums and private collections, only 30 come from properly recorded excavations. The history of Mali is quite literally disappearing from under the feet of its inhabitants.

Bulldozed ancient cemetery at Slack Farm, Kentucky, late 1980s



- Since 1975, hundreds of Buddhas in the vicinity of Angkor Wat in Cambodia have been decapitated or otherwise mutilated. UNESCO estimates that at the present time sculptures and reliefs and other architectural fragments are being removed at the rate of one a day. The storage warehouses at Angkor once contained the largest collection of Khmer art in the world, but over the years they have been ransacked. Temples and other monuments are also being mutilated. Witnesses report several hundred renegade soldiers working for several weeks at Banteay Chmar using heavy machinery to remove 500 square feet of bas-reliefs. The temple is now on the brink of collapse.
- In the United States a survey carried out in 1991 of sites of special importance in the Oglala National Grassland area of Nebraska found that 28% had been damaged by illegal fossil digging. Even in the Gobi desert, important palaeontological sites are attacked with increasing frequency.
- At Slack Farm in Kentucky pot-hunters used bulldozers

to plough through 700 burial mounds in a 500-year-old cemetery leaving broken human bones, pieces of ancient artefacts and modern beer cans in their wake.

- At the present time over 1,600 marble figurines are known from early Bronze Age graves of the Cyclades, but only about 150 were recovered in archaeological excavations. Many may be fakes but the remainder can only have been obtained through the looting of cemeteries and it has been estimated that over 12,000 graves have been ransacked. Christopher Chippindale and David Gill doubt 'if an understanding of Cycladic prehistory is now possible'⁹.

During times of war or civil unrest, the grasping hand of the black market is never far away.

- By the end of the Bangladeshi war of independence in 1971 2,000 Hindu temples had been destroyed or damaged. Most of the damage was caused by plunder rather than military action and 6,000 pieces of sculpture had been smuggled abroad. It seems that foreign-aid workers were eager buyers.
- During a military coup in 1997 when the storehouse of the *Institut des Musées Nationaux du Zaïre* in Kinshasha was raided only the best pieces were removed, evidently for sale (fortunately, they were inventoried and quite well known and will prove difficult to sell).
- In 1993, when Kabul Museum was sacked in the fighting that followed the Soviet withdrawal from Afghanistan, the looters looked for the most valuable pieces, using books from the museum's own library to guide them.
- In the wake of the 1991 Gulf War, looting in Iraq has escalated out of all control. Over 3,000 antiquities are known to have disappeared after the looting of nine regional museums; it is estimated that thousands more unrecorded antiquities have been removed from archaeological sites. At the same time the number of Iraqi antiquities on sale in London and New York has increased dramatically. The despoliation of Sennacherib's palace at Nineveh has been particularly well documented, and looted relief sculpture has been broken up and dispersed for easier transport and sale.

These are only snapshots of the illicit trade. They increase in number day by day, and together they create a shocking picture of devastation and destruction.

1.8 LOOTING IN THE UNITED KINGDOM

Looting to feed the illicit trade is usually thought to be something that goes on in foreign countries, not something that happens at home. However, it can happen in the UK, and it does. The rise of fossil hunting and metal detecting in particular over the past 30 years has been associated with increasing levels of destruction as the commercial potential of cultural heritage has been exploited more and more.

Ownership

In Scotland and Northern Ireland all antiquities whose owner cannot be identified are the property of the Crown. In England and Wales, by and large they belong to the landowner, unless they are Treasure, while fossils are included in the mineral rights, which are themselves often owned by the landowner. Thus fossil or treasure hunting with the permission of the landowner is a fully legal activity. The full context of much of this material has now been lost and a consensus has emerged that archaeological objects in the ploughsoil and fossils on a shore, fallen from an eroding area, are now considered fair game for amateur and commercial collectors. However, their

provenance is still of interest and voluntary recording schemes have been set up and publicity campaigns mounted to encourage the reporting of finds.

- In England and Wales, for metal-detecting and casual finds the Portable Antiquities Recording Scheme has just ended its second successful year of operation, sponsored by the Department for Culture, Media and Sport.
- In Dorset, in 1998, a pilot Code of Conduct for fossil collectors was launched.

Both of these schemes emphasise that collectors will not be deprived of their finds, but that it is important to register them and report their findspot. However, horror stories continue to emerge as rogue elements – the ‘nighthawks’ – keep up their attacks, from the dynamiting of Lesmahagow for its fossils in the north, to the sack of Wanborough for its coins in the south (see box).

Our lost heritage

In his book *The Salisbury Hoard* Ian Stead presents a sad catalogue of destruction and deception involving UK archaeological material, including:

- The Batheaston hoard or hoards, 301 bronze artefacts probably found in south Wiltshire and removed without the landowner’s permission, perhaps from a scheduled ancient monument.
- The possible Iron Age temple in Lincolnshire rumoured to have been ransacked after discovery by a metal detectorist.
- The Snettisham Bowl Hoard, possibly the most important hoard of Celtic coins found this century, illegally excavated and dispersed on the market.

The Icklingham Bronzes have become something of a *cause célèbre* due to the efforts of the indefatigable John Browning, the farmer from whose land they were taken, to recover them. Fifteen or more masks, beasts and figures in bronze, possibly from a Roman temple, were removed illegally from his farm sometime in the early 1980s. By 1989 they were on offer at the Ariadne Galleries of New York. They are now in the possession of Leon Levy and Shelby White who have agreed, with Browning, to bequeath the bronzes to the British Museum on the occasion of their deaths.

A large part of this looted material disappears so the damage is compounded. Not only are contexts destroyed, the objects themselves are lost to serious study.

Wanborough

After the discovery, in early 1985, of some Iron Age and Roman coins at Wanborough, near Guildford, Surrey, hoards of treasure hunters descended on the site looking for loot. Working mainly at night it is estimated that they removed some 5,000 coins, worth about £2 million, and destroyed an area of about 300 square metres (together with the covering crop). Many of the coins were dispersed abroad and subsequently spotted at fairs in Europe and the United States. Surrey Archaeological Society responded with a campaign of rescue excavation through the autumn and winter of the same year and uncovered an important second-century AD Romano-British temple, although evidence related to the coin deposits was lost, and the reasons for their burial are not clear. The looting continued, however, and by 1997 the temple itself was under attack as, again by night, deep holes were dug through its foundations. Local residents reported seeing a lorry with no lights driving past full of soil, apparently to be more thoroughly searched elsewhere. The Surrey Archaeological Society took to the field again, with the help of the local metal-detecting club who were themselves disgusted at the looting, and in 1999 a first-century AD precursor temple was discovered. This was possibly contemporaneous with the looted coin deposits, although the nature of their relationship has by now been destroyed.

1.9 THE FINANCIAL VALUE OF THE ILLICIT TRADE

Geraldine Norman has estimated that the illicit trade in antiquities, world-wide, may be as much as \$2 billion a year¹⁰; other estimates have ranged down to \$150 million. As already pointed out, because the trade is clandestine, reliable data is hard to find.

UK Trade statistics

In Britain the trade in cultural material is carried on by dealers and by auction houses. Where dealers are concerned, the trade is fairly secretive and there is no real way of calculating how many objects are bought and sold every year. Facts and figures are sadly lacking. The art trade organisations, British Antique Dealers' Association (BADA) and the London and Provincial Antique Dealers Association (LAPADA), do not keep separate lists of antiquities dealers, so it is not possible to separate out, in their membership lists, furniture or picture dealers, say, from antiquities dealers. However, the International Association of Dealers in Antique Art (IADAA), which comprises the most important *international* antiquities dealers, numbers between 20 and 30 members.

At present, Christie's (South Kensington) and Bonhams hold regular sales of antiquities. Each holds three sales a year, in late spring, October and December. Roughly speaking, in an average antiquities sale between 300 and 500 lots are sold with a total value between £400,000 and £600,000. In other words, roughly £3 million-worth of antiquities are traded in the London auction houses every year. Two sets of South East Asian auctions may be added to this picture. There are also Chinese Art sales which contain archaeological material.

A more accurate figure can perhaps be calculated from figures provided by the antiquities trade who, in 1993, stated that upwards of half a million antiquities of low monetary value are exported from the United Kingdom every year¹¹. Just what the average price of a 'low-value antiquity' would be is difficult to say, and how many high-value antiquities are exported is anybody's guess, but if it is assumed that each antiquity exported is priced at only £100, then the total value of all exports still adds up to quite a considerable sum – £50 million is probably a reasonable estimate.

How many of these antiquities were originally excavated or exported illegally is difficult to say. The majority of antiquities in the major, published, private collections do not have a provenance, neither do those in auction catalogues.

Government statistics

There are official government statistics, but they are confused. The Department of Trade and Industry allows public access to trade statistics which are compiled according to the internationally agreed Standard International Trade Classification (SITC).

For cultural material, however, this classification is far from ideal as the recording categories are too broad and imprecise. Thus antiquities might be found hidden in SITC category 896.60 (antiques of any age exceeding 100 years) or perhaps 896.30 (original sculptures and statuary) or even 896.50 (collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest), together with other types of material (including, in the latter category, natural science and ethnographic material). Ethnographic material may be recorded in handicraft categories. Nevertheless, figures provided for category 896.50, which consists entirely of material germane to this report, are revealing:

Imports from outside EU	1996	1997	1998
Total value (£000)	41,205	42,496	87,015
Weight (kg)	359,714	401,235	1,031,497

Exports outside EU	1996	1997	1998
Total value (£000)	48,794	42,515	51,935
Weight (kg)	125,772	392,733	108,584

The majority of antiquities in the major, published, private collections do not have a provenance, neither do those in auction catalogues

Antiquities leaving the United Kingdom might be redescribed before entering the US so as to circumvent US import controls

This is in line with the figure of £50 million, obtained above from statistics provided by the dealers themselves. However, this is only a minimum. The value of material which might be contained in the many other relevant categories remains unknown.

A further breakdown of these figures provided for category 896.50 may be found in official US trade statistics, which further distinguish within the category between coins and other types of collection:

Imports from UK	1996	1997	1998
Total value (\$000)	9,100	13,700	13,700
Value coins (\$000)	5,600	7,800	8,800
Value remainder (\$000)	3,400	5,900	4,900

On the face of it these statistics seem to suggest that the value of the trade in cultural material is in fact much lower than first estimated, with the major part being due to the sale of coins. Unfortunately, however, the official US statistics do not agree with the equivalent figures provided by the DTI for British exports of the same category to the United States:

Exports to US	1996	1997	1998
Total value (£000)	22,320	18,214	33,172

Clearly there is a huge discrepancy between the figures provided for US imports from the United Kingdom, and those for UK exports to the United States. UK exports are valued at something like two to three times more than US imports. The DTI can list 13 reasons for discrepancies such as these, which include reporting timelags, differences in SITC categorisation and fraudulent declarations. The cause of the discrepancy in this particular case is not immediately clear.

Australian authorities are also concerned about official figures which show that the value of art imported into the UK from Australia is far higher than that recorded in Australia for exports. This is thought to indicate the large-scale smuggling of art out of Australia. This cannot explain the US/UK discrepancy, however, where there is a drop in value between exporter and importer, not an increase. Perhaps it might be due more to fraudulent declarations: Antiquities leaving the United Kingdom might be redescribed before entering the US so as to circumvent US import controls.

The Department for Culture, Media and Sport keeps records of cultural material licensed for export, but does not allow public access to them and will not provide detailed analyses of them. The Annual Reports of the Reviewing Committee for the Export of Works of Art give some summary statistics, from which the total value of all cultural material licensed for export can be calculated, but there is little correlation between the DTI and DCMS figures:

	DTI	DCMS
1993-94 £(000)	1,347,071	1,856,678
1994-95 £(000)	1,269,057	3,133,834
1995-96 £(000)	1,298,144	3,371,448

The DTI figures published in the Annual Report are taken from the SITC Category 896 (works of art, collectors' pieces and antiques) which encompasses most cultural material licensed for export (including paintings etc), so there should be a broad measure of agreement. If anything the value of material licensed should be lower than the value of material exported, as not all material exported is licensed. It should not be almost three times as high, as it is in the figures for 1994-95 and 1995-96.

The DCMS is unable to account for the discrepancy in the figures in a satisfactory manner. The department suggests that objects between 50 and 100 years of age are excluded from the DTI figures, and perhaps aeroplanes and motor cars too. Other classes of material recorded by DCMS but not listed in SITC Category 896 might also be suggested: books; scientific drawings, manuscripts; photographs; scientific material. But still, over the years in question here (1993-6), these classes together only accounted for about 5-8% of the total value of material of British origin licensed for export, which is not enough to explain the discrepancy.

Official statistics look impressive but do not withstand a close examination. They do demonstrate that it is important for the HM Government to produce more reliable statistics to give usable information on the size of the trade.

1.10 CONCLUSION

Historically the antiquities trade has fed the demand for antiquities generated by the museums and private collectors of Europe and North America. As museums have often been the final repositories of private collections it might be argued that, in the final analysis, it has been the museums that have underwritten the trade.

But the negative publicity generated by cases such as the Lydian Treasure has caused museums to take a more ethical stance, and many museums have now adopted policies that forbid the acquisition or display of material of unknown origin, and which cannot therefore be shown to be licit. In other words, if it cannot be demonstrated with any degree of certainty that cultural material is not looted, then a museum will not want to be associated with it. But some museums still continue to turn a blind eye (see also Section 4).

Associated with the recent growth of the art and antiquities market has been a new breed of collectors, sometimes collecting purely for monetary profit. Furthermore several large, recently assembled collections of 'ancient and tribal art' have been displayed and published, and their owners make no secret of the fact that the majority of the pieces have no verifiable provenance, yet fervently deny that they might be looted. Indeed some collectors adopt a selective and limited definition of the concept of theft tailored to exclude certain forms of excavation.

In his book *The Plundered Past* Karl Meyer characterised tomb robbing as the second-oldest profession. And today, like the oldest profession, moral censure is shifting away from the practitioners and on to the customers, from those with few real options on a livelihood to those who could choose otherwise. Nobody has to collect illicit material. Ultimately, the looting of cultural material will only stop when collectors, museums and dealers refuse to buy unprovenanced objects. No matter what protective measures are put in place, whether draconian or liberal, they will be circumvented if a demand is created by a purchaser with few scruples or principles. In years to come collecting illicit antiquities will be as socially unacceptable as collecting rare birds eggs is now. But by then it will be too late. The cultural heritage of some areas is already at the point of extinction.



Photo: J Schick, Orchid Press, Bangkok

16th-century statue of Sarasvati, Nepal, before and after damage by looters

2. THE ROLE PLAYED BY COMMERCIAL ORGANISATIONS IN THE UNITED KINGDOM

2.1 EXAMINING THE TRADE

Provenance

Whatever the actual dimensions of the trade in cultural material, the central problem involves what are known as 'unprovenanced' objects, objects that 'surface' on the market and are sold without any information attaching to them in regard to where they have been found, in what circumstances, and under whose auspices. As shown in Section 1, without contextual information, objects can be meaningless to those who want to study them. This situation reflects the central dilemma, the conflict between the trade and scholars. The best way to marry the two interests would be to have a trade which deals only in properly provenanced material.

Provenance withheld

'Unprovenanced objects' is a shorthand of sorts. When these objects come to market, *someone* knows where they originated, but isn't saying. As far as antiquities are concerned, archaeologically important information is being deliberately withheld. A more accurate phrase here would be 'antiquities with an undisclosed provenance'.

There can be little doubt that the great majority of the London trade in antiquities is in unprovenanced objects. No details about private dealers are available, but inspection of the main auction house catalogues shows a surprising – and distressing – consistency in the picture. Generally speaking, over the last 20 years at least, somewhere between 65% and 90% of the antiquities offered for sale on the London auction market have no published provenance, with the figure usually at the higher end of that range.

Traditionally, the auction houses have argued that the bulk of these unprovenanced antiquities have come from small private collections or were discovered in 'attics'. This is inherently implausible, a picture that is not mirrored in other sectors of the art market but until recently it was difficult to do more than quote this implausibility. All that changed in 1997 with an exposé (published as Sotheby's: Inside Story, by Peter Watson) which, for the first and only time, provided a revealing glimpse behind the scenes at an auction house.

2.2 SOTHEBY'S IN ITALY

The basic material which gave rise to the book and two Channel 4 television programmes consisted of many original Sotheby's documents leaked to Watson by an erstwhile employee of Sotheby's, James Hodges, who in the course of a long career with the auction house had worked in several departments including antiquities. Hodges had his own reasons for taking these documents but so far as antiquities were concerned, the documents provided an unparalleled picture of the illicit antiquities market.

Most importantly, they showed that very many of the antiquities sold at Sotheby's without a published provenance had come from one dealer in Switzerland. This man went by the name of Christian Boursaud. Inquiries prompted by the Hodges documents proved that Boursaud was in fact a 'front' for another individual, one Giacomo Medici, with residences in Rome and Santa Marinella in Italy, and who was well known to the art squad of the Italian *carabinieri*. It became clear from the investigation that Medici smuggled the illegally excavated objects from Italy to Switzerland (where it is perfectly legal to import and export antiquities without any documentation) in bulk. From there, they were sent to Sotheby's in London. This subterfuge enabled Sotheby's to claim that the objects had arrived on its premises from Switzerland perfectly legally.

The size of this traffic was considerable. For example, between December 1983 and December 1986, Boursaud and another colleague consigned 248 objects to six sales with a total value of at least £640,880. Separate documents showed that in 1986, 1987 and 1988 Boursaud had traded other goods worth around a quarter of a million pounds. In Sotheby's December 1987 sale, another company owned by Medici consigned 101 lots,

out of a total of 360 in the auction. In May 1988 the same company consigned 76 lots and in December 1988 46 lots.

Nor was this all. The documents provided by Hodges included computer printouts of Sotheby's sales and these showed that among the sellers at the company's auctions were several dealers from Munich, whose names were well-known to police for their involvement in the sale of looted antiquities. The documents also showed that Medici shared an office address in Geneva with a London dealer, who traded in Switzerland under a different name, and also consigned to Sotheby's a broadly similar range of unprovenanced antiquities.

Various other documents showed that, in individual cases, regarding more valuable pieces, Sotheby's personnel had either been aware that objects sold on their premises had been illegally exported from Italy, or had themselves had a hand in the arrangements.

Following the publication of Watson's book, Italian police began an inquiry and, at the time of writing, Medici awaits trial in Rome. The *carabinieri*, aided by Swiss police, found that he had four warehouses in the Geneva Freeport, where there were 10,000 unprovenanced antiquities valued at £25 million. Some of these objects had Sotheby's labels on them, raising the possibility (not yet proven) that they were sold at the London saleroom by Medici and then bought back, as a way of 'laundering' them, making it appear that they had been bought on the 'open' market.

Medici was also in the news in the spring of 1999 after he came to an agreement with the Italian *carabinieri* to return three fragments of a bowl made by the well-known ancient potter Euphronios. The other fragments of this bowl were in the J Paul Getty Museum in Los Angeles, and on learning of the appearance of the fragments in Medici's possession, the museum voluntarily returned what it possessed to Italy.

2.3 APULIAN VASES

The entire corpus of Apulian vases has now been surveyed by archaeologist Rick Elia, of Boston University. They are a very useful barometer for studying the illegal trade in antiquities because they were only produced in a relatively small area of Italy — Apulia, what is now Puglia — and were not traded outside that area. As a result, archaeologists can be fairly certain that all objects known to scholars have come out of the ground there. In addition, the corpus has been extensively studied and there are easily available comprehensive catalogues.

It was found that 13,718 Apulian vases are known to scholars. Of these, only 753 (5.5%) were legally excavated by professional archaeologists. Analysis of 250 Sotheby's auctions between 1960 and 1997, found that 6,000 south Italian vases had been sold through the saleroom, of which 1,881 were Apulian vases. Of these, *not one* had a published provenance. This seems to imply that every single Apulian vase sold at Sotheby's over a 37-year period might have been illegally excavated or at least illegally exported from Italy.

Elia's final tabulation was to study legal excavations, where he discovered that one vase was found, on average, for every nine tombs excavated. From this it follows that the 12,965 unprovenanced objects (ie, 13,718 minus 753) might have occasioned the despoliation of more than 100,000 tombs. If there should still be any doubt about the damage to cultural heritage that this traffic is doing, it is surely dispelled by the grainy footage of the Channel 4 exposé, where a gang of Italian *tombatori* (tomb robbers) was captured on film at night, using a mechanical digger to break into the roofs of tombs.



Warehouse of illicit antiquities sealed by police at Geneva Freeport, 1997

2.4 SOTHEBY'S IN INDIA

The Hodges documents leaked to Watson (see above) also related to antiquities that had been illegally excavated and smuggled out of India. Here too specific dealers were mentioned in the Sotheby's papers, who had by that stage been consigning material to auction in London for at least ten years. In Bombay the investigators were shown both the front shop of the dealers, and taken to the warehouse where more bulky material was on display, plus objects that it was not safe to display in the front shop.

On camera, the Bombay dealers identified items among their property that were coming up for sale shortly in a London auction at Sotheby's. They admitted that material came out of India by the 'container-load'. Subsequently, they identified a London address where the material was warehoused and this was visited by the investigators, carrying a hidden camera. There, objects consigned by the Bombay dealers, and identified by them in the Sotheby's catalogue, were filmed secretly.

According to the documents made available by Hodges, material was consigned to Sotheby's by dealers in Bombay, Calcutta, Delhi and Islamabad in Pakistan. On occasions, the addresses given by the London contacts of these dealers were false. The dealers consigned between 20 and 93 items to any one sale and the combined value of these objects could reach £60,000 in any one auction.

The documents also confirmed that the then director of the Archaeological Survey of India, Dr L K Srinivasan, had written to Sotheby's at one point, asking if they could indicate to him the provenance of 156 Indian antiquities coming up at auction (this was in 1986). Interviewed by the journalists making the Channel 4 programme, he said he never got any reply from Sotheby's.

In a separate episode, Dr Dilip Chakrabarti, an Indian scholar in the Department of Oriental Studies of Cambridge University, drew attention to three items in a Sotheby's catalogue for a sale of Asian antiquities, that were labelled 'Probably Chandraketugarh, West Bengal, 2nd/1st century BC.' Dr Chakrabarti explained that this site, north of Calcutta, has never been professionally excavated and was not discovered until the mid-1950s, by which time India's law forbidding the export of archaeological material was already in place. *Any* material from Chandraketugarh has by definition been illegally excavated and illegally exported. Unfortunately, this material is now quite often seen on the market, especially in the USA.

The most notable incident involving India concerned a sandstone stela showing a goat-headed goddess. Hodges' documents showed that the statue had arrived at Sotheby's but prior to sale an academic paper had been noticed (written by Vidya Dehejla, a well-known Indian scholar) showing that the stela came from a village in the Banda area of Uttar Pradesh, known as Lokhari. On this occasion, Sotheby's had declined to auction the object but, well aware of what had happened, and where the sandstone stela had originated, failed to alert the appropriate authorities. As a result, this irreplaceable piece is still missing.

The television crew visited Lokhari where the villagers immediately recognised the stolen stela. It then turned out that the goat-headed goddess was not the only one that had gone missing. Originally, in the temple outside the village there had been 20 gods, but 11 had been smashed by thieves and the rest stolen.

2.5 SOTHEBY'S RESPONSE

In the wake of the Watson exposé Sotheby's stopped their Antiquities auctions in London and now hold them only in New York. After an internal enquiry, in December 1997 they announced a new Code of Conduct and established a Compliance Department to oversee its implementation and operation. An important feature of the

new code is a pledge not to sell an object if it is known to have been exported illegally from its country of origin, regardless of its status under EC or US law.

2.6 THE SALISBURY HOARD

An example of an illicit trading chain in Britain of the type revealed by Watson in Italy and India has recently been exposed in a remarkable study carried out by Ian Stead at the British Museum. He investigated the Salisbury Hoard, which had been excavated illegally in southern England in 1985. It is a unique find in British archaeology and contains over 500 bronze objects of various ages ranging over 2,000 years, which had apparently all been buried together sometime around 200BC. However, after its excavation the hoard was broken up and sold piecemeal so that its true nature was not revealed until 1988 when some of the objects were brought to the attention of Stead, then a deputy keeper in the British Museum.



Photo: © copyright The British Museum

Part of Salisbury Hoard packed in socks, 1993

Stead and his colleagues set out to investigate the provenance of the pieces, and the involvement of the police in what became a criminal investigation opened up the record books of auction houses and dealers. The true nature of the trade stood revealed. What had originally been a single, stolen hoard was broken up into smaller lots and passed piecemeal through the salerooms of Britain. Many dealers and auction houses - including Sotheby's, Christie's and Spinks - at one time or other sold objects from this hoard, not knowing them to be stolen of course.

2.7 CONCLUSIONS

Thanks to the investigations of Watson and Stead the organisation of the illicit trade is now reasonably well understood. As a general rule material is excavated and passed on to local middlemen, who, if necessary, are then able to arrange for the material to be smuggled out of the country, whereupon it may be bought by one or more dealers for ultimate sale to collectors or museums.

This pattern of movement and dispersal through a chain of dealers is a regular practice and details of provenance are lost in the process. Vendor anonymity is a fundamental feature of the trade and it is even promoted as a professional principle. The identities of buyers and sellers are kept secret, it is argued, so as not to attract the attention of potential thieves. Records may be kept, and indeed it is a requirement of the 1999 Council for the Prevention of Art Theft (CoPAT) voluntary Codes of Due Diligence, designed to impede the flow of stolen material through the art market (see Section 4.5), that the identity of vendors (but not purchasers) be recorded. But details of these records are kept secret. There is no requirement to reveal a record of ownership history, or the original findspot, so that there is no published information which can be used to trace an antiquity back to its original source. It is simply not possible for a potential good-faith buyer to establish whether an antiquity was originally obtained by honest, or dishonest, means. Licit and illicit antiquities become hopelessly mixed and the response of the trade is to judge them all licit, 'innocent until proven guilty' as one leading dealer has implied¹². Looted antiquities then acquire a patina of legitimacy when ultimately they are sold, without provenance, by dealers and auction houses. There is little chance they will be recognised as looted. Thus, because of this secrecy, it is not possible to document or demonstrate a consistent link between the widespread looting of sites and museums, and the continuing appearance on the market of large quantities of unprovenanced material.

Auction houses regard their first duty as being to their clients, by which they mean the people who sell through them. Since art has become so valuable, and crime rife, it is

easy for collectors and auction houses to hide a multitude of insalubrious practices behind the argument that client security comes first, so nothing must be said. This is an unsatisfactory state of affairs.

An open trade is an honest trade

It will only prove possible to combat the widespread destruction of archaeological sites when the trade in antiquities is fully transparent so that clear chains of ownership can be established, and it is possible to distinguish between licit and illicit material. The same holds true for the trade in ethnographic and palaeontological material.

The solution ultimately is in the hands of the customers, or collectors. Good-faith customers, or collectors, should demand documentary evidence of every item's provenance. While other collectors remain happy to buy objects with only the flimsiest indication of provenance, that is what they will be offered. It will continue to be expedient for the trade to market looted material, whether knowingly or unknowingly, by turning a conveniently blind eye.

5th-century statue of Vishnu, Nepal. In 1983, above, and in 1986 after looting, below



Photo: J Schick, Orchid Press, Bangkok

3. THE LAW AND THE ILLICIT TRADE

3.1 NATIONAL LAWS

Export controls

Most countries control the export of cultural material (a notable exception being the United States). This control can take the form of a total embargo on the export of all objects, or a system of screening, or licensing, whereby the majority of objects are allowed to leave the country but more important pieces are retained.

There are legal and economic limits to export control. As the volume of international travel continues to grow the trend is to relax border controls rather than tighten them. Only the most authoritarian of regimes is willing to alienate tourists and disrupt trade by making routine searches of all luggage and cargoes leaving its jurisdiction. Thus stringent export regimes are not always as effective in practice as they might be in theory, although this is no argument for abandoning export control.

The legal position is complicated by the fact that it is generally accepted that a country should police its own export laws – the job should not fall to another country whose laws might reflect a different philosophy. Thus the United Kingdom's customs authorities are not at present required to intercept and return all material illegally exported from a foreign country. In fact, material looted from the Moche royal tomb at Sipán, and smuggled out of Peru packed in brown paper and peanuts, was routed through the United Kingdom, 'Because England [sic.] was not a signatory to any of the international agreements protecting the cultural heritage of countries like Peru, the only delay... encountered in clearing customs was the inability of agents to decide whether to categorise the Moche artefacts as "ethnic art" or "cultural antiquities".'¹³

It is sometimes argued that an illicit trade is the natural outcome of a total export embargo, as objects will be smuggled out of a country to meet an international demand. Thus, the argument continues, a more lenient export regime would encourage legitimate commerce in an open market, and the volume of the illicit trade would dwindle accordingly. In practice, however, the validity of this argument remains to be demonstrated and it can be countered that, as in some other sectors of the economy, a thriving legitimate market might act only to stimulate its black counterpart. The United States and the United Kingdom continue to suffer from looting despite their liberal export regimes.

The 1947 *General Agreement on Tariffs and Trade* (GATT) is intended to encourage free trade by removing impediments to the import and export of goods but Article XX (f) of the Agreement makes an exception for export controls which are 'imposed for the protection of national treasures of artistic, historic or archaeological value'. In 1995 the GATT signatories organised themselves into the World Trade Organisation (WTO) which has since been under pressure from the United States to withdraw this cultural exception. Clearly, if the US was to succeed, the illicit trade would explode.

Proof of ownership

Some countries have taken certain categories of material, most notably antiquities and palaeontological material, into state ownership. Illegal export of this state property is then considered theft. As theft is a generally recognised criminal offence it is in the interests of all countries to act against it, so the police of one country may take action to recover material stolen from another, and expect their efforts to be reciprocated in return.

Inevitably, there are problems here also. A government might take its country's cultural heritage into state ownership by passing a patrimony statute, but such a statute will not be recognised internationally as having a retrospective effect. Thus material removed from a state before the passing of a statute cannot be claimed as stolen. As the majority of material traded illicitly is removed illegally, and therefore secretly, it is very difficult to show that it was removed after the enactment of a patrimony statute, and didn't in fact leave the country some time long ago.



Photo: Ö Acar

**The 'Weary Herakles';
half is in Turkey, half is
in the Boston Museum
of Fine Arts**

This can lead to extraordinary situations like the case of the 'Weary Herakles' - a sculpture of the Greek god Herakles, dating to the second century AD.

- The upper half of the statue was first seen in the United States in the early 1980s and is currently to be found in the Boston Museum of Fine Arts, although it is part-owned by the American collectors Leon Levy and Shelby White. The lower half was excavated near to the Turkish town of Antalya in 1980, and is now on display in Antalya Museum along with a photograph of the top half. In 1992 plaster casts of both halves were brought together and shown to be a good match, proving that the two pieces were indeed parts of the same statue. But despite this the Boston museum argues that there is no evidence to show that the upper half was stolen as it may well have been removed from Turkey long ago. Turkish antiquities have been state property since Ottoman times (1906) but without the evidence to show that the piece was removed after that date it is not possible to prove otherwise and the Turkish government has not pressed its claim.

However, some claims do succeed.

- Such was the case with the so-called 'Aidonia Treasure', a collection of Bronze Age jewellery from Greece offered for sale in April 1993 by the Michael Ward Gallery of New York. Once it was on display it was soon noticed that there were many similarities of iconography and technique with material recovered in the late 1970s during a rescue excavation by the Greek Archaeological Service of a previously looted cemetery - so much so that the Greek government claimed it as stolen property and sued for its return. The two sides settled out of court and the Aidonia Treasure has now been returned to Greece.

Even material in cultural or religious institutions is at risk if it is not properly documented and recorded on an inventory. Similarly, if buildings or monuments are not properly described they too can lose the more decorous parts of their architecture which will then turn up on the market as 'fine pieces of sculpture'.

- The storehouse at Angkor Wat was robbed of its contents sometime after 1970 but in 1993 ICOM was able to advertise many of the stolen pieces which were recorded in the collection's inventory. Six were recognised in private and museum collections, including a head in the possession of the Metropolitan Museum of Art in New York, which was subsequently returned to Cambodia. The pieces had all been sold by western dealers, including three at Sotheby's New York and one at Sotheby's London.

Sometimes it is not enough for a government merely to declare ownership, it must act in such a way as to exert ownership.

- In 1989 a US court rejected a Peruvian claim for the return of 89 Pre-Columbian antiquities on the grounds that, among other things, the Peruvian government allowed private ownership of antiquities within Peru, and that therefore the Peruvian patrimony law was in practice enforced only as an export control.

The 'international loophole'

The job of combating the theft and illicit trade in cultural material is made more difficult by what one senior police officer has called the 'international loophole'¹⁴. This loophole is caused by different conceptions of who is the rightful owner of property which is purchased legally but subsequently identified as stolen. The Common Law of England and Wales, and the United States, has traditionally favoured the original owner. Thus if a thief or an accomplice sells stolen material to an innocent third party and the material is subsequently recognised as stolen, then it is returned to its original owner and the purchaser, even if innocent of any crime, may well lose the money paid

out. However, the situation is different in most other European countries with a Civil Law code, which favours the innocent buyer. Thus if a third party buys stolen material from a thief or an accomplice and the material is subsequently shown to be stolen, then the material stays with its new owner, provided the purchase was made in good faith. The original owner is dispossessed.

It is a principle of international law that the question of title to stolen goods should be decided according to the law of the country in which the transaction took place, not the country in which the goods were recovered. This means in practice that any cultural material that was originally stolen, but bought in good faith in continental Europe, can then be legally exhibited or sold in the United Kingdom or USA even if its illicit origin is discovered and made public.

The Swiss card

It is suspected that this loophole allows large quantities of stolen material to be 'laundered' by means of a good faith purchase in continental Europe. Switzerland, in particular, has a thriving market in cultural material and objects bought there can be sold legitimately in the UK or US. It is common to read in catalogues or advertisements that a piece is from a collection long established in Switzerland. This emphasises that the material will not be reclaimed, even if it is subsequently shown to be stolen. In fact the attribution 'property of a Swiss gentleman' is regarded by some as a euphemism for 'illicit material'.

But playing the 'Swiss card' is not always well-advised:

- In Geneva the American art dealer Peg Goldberg bought four fragments of the Kanakariá mosaic, stolen from an early Christian church in Cyprus; but in 1989 an Indiana court ruled that her purchase was not in good faith. (See box feature)
- In 1997 the British dealer Jonathan Tokeley Parry was convicted of smuggling antiquities out of Egypt into the UK. He tried to claim that he had in fact bought them in Switzerland but the true nature of their acquisition was exposed by the testimony of his accomplice.

Costs

However, these are not the only problems faced when mounting a legal action for recovery of a stolen object. The high cost of mounting a law suit can deter even governments, except in cases of exceptionally important, or high value, material. The resources are simply not available to sue for the return of large numbers of objects, even if their status as stolen property could be proven in court.

3.2 UNITED KINGDOM

In theory, handling stolen goods (wherever they were stolen) is a criminal offence in the United Kingdom and dishonest dealers or purchasers may be prosecuted accordingly. Dishonest dealers are few and far between but even an honest dealer, or collector or museum, may lose money if caught inadvertently in possession of stolen goods.

However, in practice it is difficult to follow through a case of theft when the material involved has crossed several jurisdictions. The problems posed by the 'international loophole' have already been discussed and legal complications multiply with the number of borders crossed. UK legislation has in the past been shown to be ineffective in dealing with international crime, and its failure to deal with drugs trafficking has prompted a thorough revision of the law. Since the late 1980s, Parliament has approved a series of acts aimed at discouraging crime, wherever it occurs, by depriving criminals of its proceeds and the new laws have been co-ordinated and given better focus by the Money Laundering Regulations of 1993. This new raft of laws offers a much better means of combating the illicit trade and in this context has been described by one senior police officer as 'a godsend'.¹⁵

There is no mechanism in place to check that much European archaeological material exported from the UK was first exported legally from its country of origin

Suspicion or belief?

Under the Theft Act of 1968 a dealer can be found guilty of handling stolen goods provided it can be established that there was reasonable cause to believe that they were stolen. Mere suspicion of theft is not strong enough for a successful conviction under the Theft Act. But now, it seems that under the 1988 Criminal Justice Act and the 1994 Drug Trafficking Act, a middleman acting as an intermediary to arrange a transaction can be convicted of assisting another person to retain the proceeds of a crime, wherever it occurred, provided there was good reason to *suspect* that one of the parties to the transaction has engaged in or benefited from a criminal action. Suspicion, of course, implies a greater state of uncertainty than belief.

Thus, in the past, when an auction house had arranged the sale of an object subsequently shown to have been stolen, it had been able to plead innocence on the grounds that it had no good reason to believe that the object was, in fact, stolen. Now, mere suspicion seems to be enough grounds for prosecution.

Furthermore, without a full and properly documented ownership history, it would seem prudent to treat any object from one of the major drug producing areas of central and south-eastern Asia or Latin America as suspect; failure to do so could result in a criminal prosecution for money laundering. This interpretation remains to be established in a court of law but there is good reason to hope that the threat of prosecution under these new laws will act as a major deterrent to those companies or individuals who deal in unprovenanced material, and may go some way towards cleaning up the market.

Export licensing

The United Kingdom operates a system of export control which is designed to stop the export of what are termed 'national treasures' without at the same time obstructing the free trade of other cultural material. The system is based on recommendations first made in the Waverley Report of 1952 and was modified in 1993 with the implementation into UK law of EC Regulation No. 3911/92 on the export of cultural goods. It is administered by the Export Licensing Unit of the Department for Culture Media and Sport. Guidelines are set out in the department's 1997 booklet *Export Licensing for Cultural Goods*. The system is complex and the requirements are different for exports to destinations inside or outside the EU (although the majority are directed outside the EU). An EC licence is required for the following categories of material which are of interest to this report when they are exported to destinations outside the EU:

4. *Archaeological material or any object more than 50 years old found in UK soil or its territorial waters, other than any object buried or concealed for less than 50 years;*
- 5b. *Archaeological material or any object more than 100 years old found in soil or waters outside the UK and its territorial waters (unless they are of limited archaeological or scientific interest and provided that they are not the direct product of excavations, finds and archaeological sites within a member state).*
- 6b. *Elements forming an integral part of artistic, historical or religious monuments, which have been dismembered, and which are more than 100 years old*
33. *Collections and specimens from zoological, botanical, mineralogical or anatomical collections more than 50 years old, and valued at more than £39,600*
34. *Collections of historical, palaeontological, ethnographic or numismatic interest more than 50 years old and valued at more than £39,600.*

It is difficult to know to what extent these rules are complied with. Statistics are not available for public inspection. There are certainly well documented cases of material from category (4) being exported without a licence, the Icklingham Bronzes for instance, but the situation with category (5b) is more serious. This category is designed to prevent the unlicensed export of material that originated in other EU member states, as the issue in the United Kingdom of an EC licence for an object to be exported is dependent on the submission of proper export documentation from its country of origin, if that country is within the EU. Yet a recent study has shown that about 90% of objects of non-UK origin sold in auction houses are exempted from licensing requirements, presumably on the grounds of limited importance, many of them from EC countries – especially Greece and Italy. Once they are exempt from licensing requirements then no check is made by the Export Licensing Unit on their original documentation, or the legality of their initial acquisition. The UK's weak implementation of the EC regulation therefore fails to achieve its aim of regulating the flow through Britain of material exported from other member states. There is no mechanism in place to check that much European archaeological material exported from the UK was first exported legally from its country of origin.

Any cultural object which has come to the United Kingdom from another EU Member State since 1993 must have valid export documentation from its country of origin before the DCMS will issue an EC licence for its export from UK. This requirement was put in place by EC Regulation No. 3911/92 to stop material from parts of Europe with a stringent export regime being exported from those (particularly the UK) with a more liberal regime. In practice, however, there seem to be few checks on original documentation as most material is excluded from EC licensing requirements, presumably on the grounds of limited importance.

At public viewings held before major auctions lists are made available to identify which lots would require an EC licence for export. If a lot does not require a licence then it can be exported without any check being made on its original documentation. A study of Classical Greek and Italian pottery offered for sale at two recent auctions (Bonhams: 25 November 1998 and 22 April 1999) showed that out of a total of 61 lots only six had any kind of a provenance and of the remaining 55 only one required an EC licence for export. Thus 54 lots (106 pots) could have been exported without being passed through the licensing procedure, and with no check being made on their recent history. This seems to undermine the purpose of the EC Licensing System which is to prevent the illegal export of cultural material from one member state to another, and can only facilitate the movement of illicit material through the market.

The position as regards palaeontological material is not altogether clear, although it was brought to everyone's attention by the case of 'Lizzie', the oldest known fossil reptile.

- In 1989 a small fossil reptile, about 340 million years old, was found in Bathgate, Scotland and offered for sale by the finder to the Staatliches Museum für Naturkunde in Stuttgart. An application for an export licence was submitted to the Department of Trade and Industry, which at that time administered the licensing system, but the application was turned down on the grounds of scientific importance (including the fact that it was one of the very few fossils of its type found in a stratigraphical context). It was subsequently ruled, however, that fossils were not subject to export control and that, in fact, a licence was not required for export. The Secretary of State for Trade and Industry refused to bring natural heritage items under control although Lizzie was in fact saved for the nation when it was sold by its finder for £170,000 to the National Museum of Scotland. The situation as regards palaeontological specimens has now changed, however, with the introduction of the EC licensing rules, which require a licence for collections valued at more than £39,600.

The export licensing system was never intended to restrict the movement through the United Kingdom of material of foreign origin, therefore it would be wrong to portray it as a mechanism of control. However, given the present murky state of the trade, the licensing system could function as a useful, indeed necessary, means of information acquisition.

- It is in the public's interest for the trade in cultural material to be properly monitored and for useable statistics to be compiled and made readily available – as pointed out in Section 1.9, there are at present no reliable statistics available with which to describe the market.
- The increasing concern about the abuse of the art trade generally for the purposes of money laundering means that the trade might come within the scope of the extended money laundering regulations presently being drafted by the European Commission. Central features of any regulatory code, whether statutory or voluntary, are the creation of 'paper trails' and the operation of a transparent market. A comprehensive and easily accessible export licensing system would offer both and thus would seem to be an essential part of any such regulation. Indeed, the Financial Action Task Force (an inter-governmental body established by the 1989 G7 summit to combat money laundering) recommended this in 1998: that an effective export licensing system for cultural objects is a key component of any strategy designed to defend against international crime.

The EC Licence application form requires that descriptions of the object to be exported be provided, which for objects originating outside the UK goes some way towards providing a provenance. Thus the information collected would allow material flows to be identified and quantified. It would require only greater compliance for the existing system to achieve a better coverage of exports. Changes in legislation are not necessary. The arguments against instituting a full licensing system are primarily economic – the financial burden is too great. But, given the arguments set out above, the extra cost would seem to be justified.

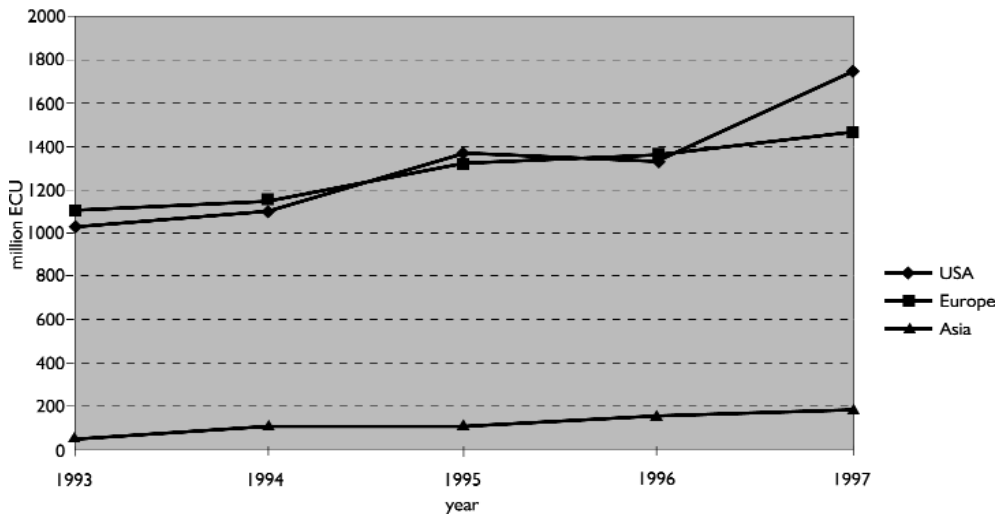
3.3 INTERNATIONAL CONVENTIONS AND THE UK RESPONSE

No government can police every archaeological and palaeontological site in its country in an attempt to keep off looters, nor can it monitor every border crossing to enforce export controls. The resources are, quite simply, not available. As shown above, the illicit trade is also facilitated by differences in law between jurisdictions, so that it is difficult for a government to reclaim material once it has been exported illegally from its territory. Not only that, it is also expensive. To overcome these problems international conventions have been devised over the years, with the aim of allowing an internationally-unified response to what is an international problem.

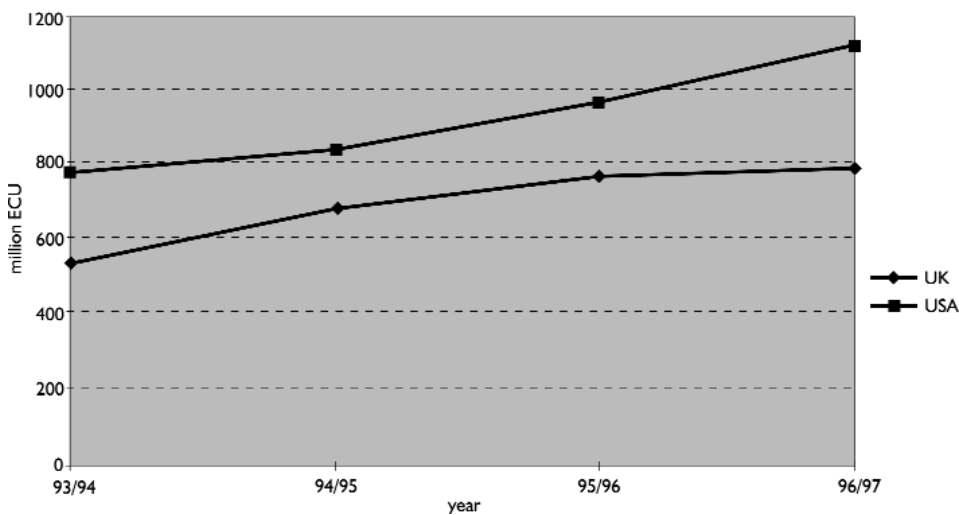
1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

The 1970 UNESCO Convention establishes a legal framework within which governments can have the opportunity to co-operate to fight the illicit trade in cultural property. Cultural property is broadly defined, and as well as works of art it includes mineral and palaeontological specimens as well as antiquities, objects of ethnographic interest and elements of historic buildings and monuments which have been dismembered.

The convention makes provision for a state party to request the return of an object stolen within its own jurisdiction but located within the jurisdiction of another. It also makes provision for a state party to request another to impose import restrictions on specific classes of material. There are also recommendations for education and training.



Value of total auction sales (combined Sotheby's and Christie's, all material)



Value of total dealer sales (fine art only)

A state can implement any or all of the articles of the convention but it is not retroactive. This means that claims for restitution can only proceed for an object that was removed from the territory of a claimant state after the date of ratification by the state party from which the object is to be recovered. Private and public collections established within a state before it becomes party to the convention are not open to claims for restitution. Its main faults are that it is a diplomatic rather than a legal instrument so that requests for action have to proceed at the inter-governmental level. It also fails to allow for differences in property law so that the 'international loophole' described earlier remains open.

At the present time there are 91 states parties to the convention around the world. Of the major market states, the US (see below) and France have ratified the convention and Switzerland is currently drafting implementing legislation.

However, in sharp contrast, in the UK the government has consistently refused to ratify the convention and has, over the years, given many reasons for this. Thus it has been claimed that, owing to the need to prepare a national inventory and enact legislation, implementation of the convention would place a large burden of bureaucracy on the British taxpayer; that it is unnecessary as the trade is self-regulated; and that its implementation might damage the multimillion pound art trade.

The requirement for a national inventory is set out in Article 5 of the convention:

'...the States Parties to this Convention undertake, as appropriate, for each country, to set up within their territories one or more national services... with a qualified staff sufficient in number for the effective carrying out of the following functions...'

These functions include:

'(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage.'

The list of important public and private cultural property is intended to impose a limit on the types of material or objects to which the UNESCO provisions would apply.

The assembly of a list of important public and private property is seen by HM Government to be a time-consuming and expensive procedure – one best avoided. However, UNESCO points out that it does not have to be a list of individual objects, but can be comprised of categories, much as already exists in the United Kingdom for purposes of export control. Thus there is in fact little or no cost attached to the preparation of a list if these pre-existing categories are used.

The hope for a self-regulating trade has now been shown to be a vain one. As pointed out in Section 2.7, members of the trade take the approach 'innocent until proven guilty' as far as provenance is concerned, and continue to maintain that it is not possible to establish the provenance of most objects bought and sold. Nor in fact do they think it desirable to do so. During the development of the 'Object ID' international standard for describing cultural objects, a questionnaire was circulated (answered by 181 dealers' associations and individual dealers in 13 countries) asking what information was thought useful for the identification of an object. It is significant that only 48% of respondents thought that the means by which an object was acquired and the date of its acquisition were worth recording¹⁶. This would seem to imply that, in general, over half of the art trade (including antiquities dealers) has no interest in the provenance of an object, in either its broad, fine art sense or its narrower, archaeological/geological usage. In view of this inability or unwillingness to ascertain provenance, it seems that clauses in ethical codes produced by art trade organisations (such as the IADAA) that supposedly regulate the dealing community and forbid the sale of stolen or illegally exported material cannot be adhered to, and are merely cosmetic.

Criticisms of ethical codes are not limited to the antiquities trade. In February 2000 Christie's and Sotheby's were accused of price-fixing across the board. A leading London art dealer reported their collusion to British trade associations but no action was taken.

Finally, the argument that ratification of the UNESCO Convention might adversely affect the multimillion pound art trade is difficult to sustain. In the first place, cultural material accounts for less than 15% of the total art market. The convention would not affect the higher volume legitimate trade in fine art and antiques. Secondly, there is no evidence that the ratification of the UNESCO Convention by the United States has diminished that country's share of the world art market, which has in fact continued to grow faster than Europe's over the past decade (see diagrams on p.37). Nor did US ratification deter Sotheby's from moving their antiquities business from London to New York in the wake of the Watson exposé (see Section 2). Art market shares generally seem to respond more to fluctuations in exchange rates or differences in tax regimes. Ratification of the 1970 UNESCO Convention by HM Government would be unlikely to inflict any noticeable damage on the UK art trade. In fact, the opposite might be true. Colin Renfrew has made the point that the sleazy trade in illicit antiquities gives a bad name to the entire commercial art world¹⁷.

Ethical codes produced by art trade organisations that supposedly regulate the dealing community and forbid the sale of stolen or illegally exported material cannot be adhered to, and are merely cosmetic

The US approach

In the United States the Cultural Property Implementation Act of 1983, in effect, implements Article 9 of the UNESCO Convention which allows the US government to respond to requests from other state parties to impose import restrictions on certain classes of archaeological or ethnographic material by bilateral agreement. Import restrictions apply to material even if it is imported from a country other than that of origin. The CPIA is not retrospective as restrictions will apply only to material still in the ground or in its societal context at the time of the agreement. Thus its emphasis is on the protection of material with a still undisturbed context rather than on the return of material whose context is lost.

The US has now reached bilateral agreements with eight states (Bolivia, Cambodia, Canada, Cyprus, El Salvador, Guatemala, Mali and Peru) and is currently considering requests from two more (Italy and a more extensive agreement with Bolivia). Sometimes the category of material restricted is quite specific, sometimes it is quite broad.

- In Bolivia ceremonial textiles were being illicitly removed from the small Andean village of Coroma and marketed in the US. Some were even displayed in a travelling exhibition supported by a major museum. It is now illegal to import these textiles into the US.
- Import restrictions on Canadian material, on the other hand, are wide ranging and encompass all archaeological and ethnographic material from the native peoples of Canada.

To help Customs Officers recognise restricted material a web site is maintained by the United States Information Agency¹⁸ which carries images of typical restricted objects so that they can be quickly and easily identified at border checkpoints.

Photo: Michel Brent

In the late 1960s and 1970s terracotta statuettes from the inland Niger delta region of Mali became the latest fad among collectors of 'tribal art'. Hundreds or even thousands had been dug up and smuggled out of Mali before the first one in context was found during an archaeological excavation in 1977. Between 1989-91 a Dutch team surveyed an area of 125 square miles and found that 45% of the 834 sites they discovered had been damaged by looting. The statuettes may command anything up to \$275,000 at auction and most end up in private collections although some have found their way into museums, including the Boston Museum of Fine Arts and the Tervuren Museum of Belgium.

The inland delta region of Mali has a rich cultural heritage which stretches back to the Stone Age. A thousand years ago it was home to a great urban civilisation which had trading links to all parts of Africa and even as far as Asia. Yet the history of Mali is known only from archaeology, and if the archaeology disappears then the history will too. In 1993 the Malian government established three cultural missions, including one at Djenné, with a view to raising public awareness of the importance of the archaeological heritage, and then in 1998 at Djenné work commenced on the construction of a local museum. In 1997 Mali reached agreement with the United States under the terms of the UNESCO Convention whereby the US government undertook to place import restrictions on archaeological material coming from the Niger River valley region and the Tellem caves. These import restrictions, in conjunction with educational and police work on the part of the Malian authorities, have been so successful that looting in the area of Djenné is now virtually a thing of the past.

Looters' hole in Thial, Mali



The United States implementation of the UNESCO Convention offers protection to *in situ* material, thereby preserving context, it is accompanied by minimum bureaucracy, and it does not impede the legitimate art trade. The Swiss government seems to be moving towards a similar implementation. It is currently drafting the necessary legislation and a final decision will be made in the year 2001.

The UK loophole

The failure of the United Kingdom to ratify UNESCO is deplorable in itself, but the position is worsened as, in effect, the United Kingdom is undermining American efforts. As has been described in Section 3.1, and as Lord Inglewood told the House of Lords in 1997: 'It is not an offence to import into this country antiquities which have been illegally excavated in and exported from their countries of origin'¹⁹. In the wake of import restrictions placed on Pre-Columbian material by the United States, reports suggest that such material is now moving through London before entering the United States – through the 'back door', so to speak. To counter this possible contingency the US State department at the time of ratification issued a statement expressing its desire to see a multilateral response to appeals from states whose heritage is under threat. But still, it was reported in 1997 that the London market was glutted with smuggled Pre-Columbian antiquities, with 60% of the sales revenue coming from Americans.

On 9 February 2000 HM Government announced that it had decided not to sign the 1970 UNESCO Convention because 'significant practical difficulties remain in implementing its provisions into UK law'.²⁰ What these practical difficulties are was not made clear.

1995 Unidroit Convention on Stolen and Illegally Exported Cultural Objects

The 1970 UNESCO Convention is an instrument of inter-governmental co-operation and makes no provision for private individuals or institutions to reclaim stolen material through the courts of a foreign country. Furthermore, claims for restitution made under the UNESCO Convention have been interpreted as applying only to stolen material – material previously known and inventoried. The 1995 Unidroit Convention is designed to rectify these deficiencies by providing a legal framework within which private actions for restitution can proceed, and by defining that an object which has been illegally excavated, and so not inventoried, should in any case be considered as stolen.

The 1995 Convention is a good legal compromise as it follows the Common Law practice of favouring the dispossessed owner of an object over a good-faith purchaser, thus closing the 'international loophole', but in accordance with the principles of Civil Law it allows a good-faith purchaser to claim compensation should the object be reclaimed. To claim good faith, however, the buyer must be able to show that a certain standard of diligence was adhered to at time of purchase. This latter provision is considered by some commentators to be perhaps the most significant feature of the convention as it will encourage the development of a more honest market. Buyers will be encouraged to enquire more rigorously into the origin and past history of an object before committing themselves to a purchase. The definition of due diligence might also provide a model for future domestic or international legislation and a point of reference for future law suits (see Section 4.5).

Like UNESCO, the Unidroit Convention is not retroactive. Unlike UNESCO, Unidroit must be fully implemented. Twenty two states have signed the Unidroit Convention, but only eight states have ratified it. Most seem to be following the lead of the USA, which is not at present considering ratification.

The UK position

On 7 February 2000 HM Government announced that it would not sign the Unidroit Convention due to conflicts with current UK law. It put forward two legal objections in support of this decision. In the first place it is argued that the limitation periods are different to those which apply in the 1994 Return of Cultural Objects Regulations (see

below), which are in turn different to those which normally apply for stolen property. This would cause confusion in the courts. Secondly it is argued that the principle of compensation is alien to established common law practice.

The limitation periods allowed for by Unidroit are certainly more generous than is usual in the UK, but this is deemed necessary by the very nature of the material under consideration. Unlike objects with built-in obsolescence, televisions for instance, there is no need to sell a cultural object shortly after its theft in order to achieve a maximum return. It can be kept hidden away – where it will appreciate in value – until it can be brought to market after the limitation period has expired. Thus in the realm of cultural material even stringent legislation can be undermined by short limitation periods. Those responsible for drafting the Unidroit Convention were far-sighted enough to avoid this eventuality.

HM Government's objection to the payment of compensation is difficult to understand. Article 9(1) of the convention allows Common Law countries to ignore requirements for compensation, and thus represents an advance over the 1994 Return of Cultural Objects Regulations, where compensation is payable in cases of illegal export, and which have already been accepted into British Law.

1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention)

This convention was designed to protect the world's cultural heritage in times of war. It provides for the protection of monuments, cultural institutions and repositories, as well as moveable objects. A Protocol (First Protocol), drafted at the same time as the convention, deals specifically with moveable objects, forbidding the export of cultural material from occupied territories and providing a legal framework to enable the return of material so removed. The war may be international or internal.

- Two Khmer stone heads were recently seized by French police from an antiquities dealer and returned to the Cambodian embassy but to date no state party to the protocol has issued a general order for seizure of all Cambodian material. Such an initiative cannot be expected to be taken by nationals of countries involved in conflict who are in no position to petition the governments of neutral states

The UK and US did not sign the Hague Convention until 1965 but failed to ratify it. The US started the necessary ratification procedure in 1999 but the UK government has remained silent.

The 1954 Convention was drawn up with world wars one and two in mind, but since then there has been an increase in internecine strife, often along ethnic or religious divides, and the obliteration of an enemy's identity by destruction of its cultural heritage has become a frequent war aim. This failure of the convention to prevent the loss or destruction of cultural material during times of war led to the formulation of a Second Protocol in 1999. Among its many provisions it establishes that the destruction or appropriation of cultural material is a war crime, and includes a chapter that deals specifically with civil wars.

EC Directive on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member state

This passed into British Law as the Return of Cultural Objects Regulations 1994. It confers on each member state of the EU the right to reclaim cultural objects which have been illegally exported from the territory of one member state to another. It is not retroactive. Again, like the UNESCO Convention, it is an instrument of inter-governmental co-operation and it contains provision for the compensation of a good-faith purchaser. No case has yet been brought in Britain and it is thought by some experts that the procedure to be followed is overly cumbersome and that this might discourage its use.

The obliteration of an enemy's identity by destruction of its cultural heritage has become a frequent war aim

3.4 RECOMMENDATIONS TO HER MAJESTY'S GOVERNMENT

1. HM Government should proceed to ratify both the 1970 UNESCO and 1995 Unidroit Conventions forthwith. This would:

- prevent the United Kingdom being used as a market place for material which was, in the first instance, obtained illegally (by, for example, controlling its import). By failing to ratify it can be argued that the United Kingdom condones criminal behaviour abroad.
- provide a means for reclaiming material exported illegally from the United Kingdom much of which, at the present time, is lost.

2. HM Government should take steps to make the system for licensing exports of cultural material fully comprehensive, and to improve compliance and data collection. No new legislation is needed. This would:

- establish the value and pattern of the international trade in cultural material, and so help guide government policy
- encourage the development of an open market
- help to protect material originating within the United Kingdom
- circumvent the need for a list of important cultural property to be maintained as a requirement of implementing the 1970 UNESCO Convention.

3. HM Government should encourage 'transparency' in the trade by requiring that auction houses and dealers record and, when it is in the public interest, disclose the names of individuals or organisations from whom they purchase material.

4. HM Government should review whether tax benefits should be allowed to accrue to individuals in respect of unprovenanced material, for instance in the Acceptance in Lieu scheme for inheritance tax and the Conditional Exemption scheme.

5. HM Government should review whether it is appropriate for the Government Indemnity Scheme to continue to cover loans of unprovenanced material to UK museums.

6. HM Government should proceed to ratify the 1954 Hague Convention, along with the 1999 Second Protocol.

7. HM Government should resist US pressure at future meetings of the WTO for the abolition of trade controls on cultural material.

*Pakistani
archaeologists,
members of the
Provincial Department
of Archaeology,
Government of NWFP
halting an illegal dig at
Shaikhan Dheri,
Charsadda*



Photo: Coningham 1993

4. MUSEUMS AND THE ILLICIT TRADE

4.1 CODES OF ETHICS

Ethical evolution

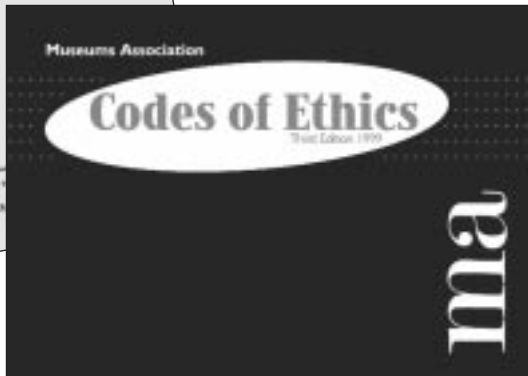
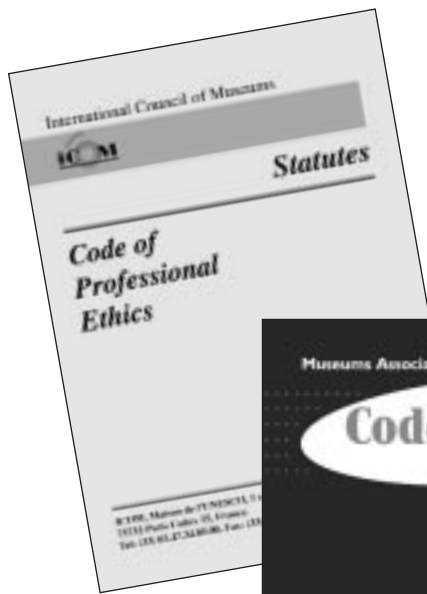
Well-founded museums uphold a number of codes of ethics and guidelines prepared by national or international bodies. Over the years, as museum priorities and attitudes have changed, ethical codes, regularly revised, have evolved. During the 1970s as cultural theft became more of an issue and, especially following the 1970 UNESCO Convention, museum ethics 'statements' started to address issues surrounding the acquisition and exhibition of illicit, or potentially illicit, objects. In the early 1970s various American museums, the Archaeological Institute of America, and the American Association of Museums issued a series of declarations deploring the growing 'black market' and committing themselves and their members to abstain from buying material without satisfactory pedigree. The decision of the UK government to refuse to ratify the 1970 UNESCO Convention prompted the British Academy, the Standing Commission on Museums and Galleries, the British Museum and the Museums Association to issue a joint declaration in 1972. This emphasised the importance of preventing archaeological destruction, and the importance of the study and interchange of cultural material. The declaration reaffirmed that museums in the UK did not and would not acquire any cultural material believed to have been exported in contravention of the laws of the country of origin. Museum authorities, notably Leicestershire County Council, published ethical acquisition policies and by 1977 the Museums Association Code of Practice for Museum Authorities and interim Guidelines for Professional Conduct were adopted.

Adherence to relevant codes of ethics is a condition of membership of most professional museum organisations. 'Serious reasons relating to professional ethics' can provide grounds for termination of membership for institutional and individual members of ICOM, but voluntary codes of ethics are notoriously difficult to enforce. Nevertheless, a Swiss museum is currently in negotiation about the return of a stolen African artefact partly because of the threat of expulsion from ICOM.

In the UK when an ethical dilemma is encountered, members of the Museums Association are encouraged to raise the matter, in confidence, with the Ethics Committee which discusses it in confidence. The Museums Association may investigate allegations further. A museum could be expelled from membership of the Museums Association by the Museums Association Council, but this has not yet happened in a case involving illicit acquisition. The Museums Association's preferred approach is to work with offending members to improve future practices. Any individual or museum can consult the Ethics Committee for advice.

Museum professionals welcome clear guidelines from professional organisations, especially for dealing with issues like the illicit trade, which involves negotiating legal and ethical minefields. In January 1999, the Association of Art Museum Directors in the USA decided to revise its code of ethics to close loopholes, address the 1970 UNESCO Convention and clarify the complicated legal situation surrounding the acquisition of objects illegally exported from their country of origin but not stolen. The prospect of clearer guidelines was well-received. In fact Alan Shestack, now deputy director of the National Gallery of Art in Washington DC went further in a 1986 speech calling for higher ethical standards. He said that, during his tenure as director of the Boston Museum of Fine Arts, he 'cried out for stringent laws that would give museum directors a reason for not doing the evil thing'.²¹

Two codes (ICOM and MA) are particularly relevant to UK museums. They carry guidelines for due diligence procedures, interaction with the market, and prudent, lawful spending of museum funds.



The ICOM Code of Professional Ethics

The ICOM Code of Professional Ethics addresses the rights and wrongs of acquisition of illicit material in Section 3.2. It begins with a denouncement of the illicit trade, and continues:

'Museums should recognise the relationship between the market place and the initial and often destructive taking of an object for the commercial market, and must recognise that it is highly unethical for a museum to support in any way, whether directly or indirectly, that illicit market.'

A museum should not acquire, whether by purchase, gift, bequest or exchange, any object unless the governing body and responsible officer are satisfied that the museum can acquire a valid title to the specimen or object in question and that in particular it has not been acquired in, or exported from, its country of origin and/or any intermediate country in which it may have been legally owned (including the museum's own country), in violation of that country's laws...

So far as excavated material is concerned, in addition to the safeguards set out above, the museum should not acquire by purchase objects in any case where the governing body or responsible officer has reasonable cause to believe that their recovery involved the recent unscientific or international destruction or damage of ancient monuments or archaeological sites, or involved a failure to disclose the finds to the owner or occupier of the land, or to the proper legal or governmental authorities.'

Section 3.6 states that the same principles should apply when considering loans for exhibitions.

Section 4.4 rules that should a country request the return from a museum of an object which can be demonstrated to have left its territory in violation of the principles of the UNESCO Convention then, if legally free to do so, the museum should do everything possible to ensure its return.

Section 8.5 states that museum professionals should not identify, authenticate or value any object suspected to have been illegally acquired, transferred, imported or exported or act in any way that could be regarded as benefiting illicit trade. The appropriate authorities should be informed when such suspicions arise.

The UK Museums Association Code of Conduct for People who Work in Museums and Code of Practice for Governing Bodies

Designed to complement each other, these two codes are supplemented by additional sets of Ethical Guidelines.

Article A.5 of the Code of Conduct for People who Work in Museums states that:

'Museums should not accept on loan, acquire, exhibit, or assist the current possessor of, any object that has been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in violation of that country's laws.'

When considering acquiring an object, museum professionals are expected to obey the law and take account of the principles of the 1970 UNESCO Convention, the 1995 Unidroit Convention and regulations of the country or locality from which the object originated. If necessary, suspicions that an object has been illicitly obtained should be reported to the appropriate authorities.

The Code of Practice for Museum Governing Bodies also cites statute law and the principles of the 1970 UNESCO Convention as a standard by which to judge whether an item should be acquired.

The UK Museum Registration Scheme

The UK Museum Registration Scheme, originally established by the Museums and Galleries Commission, requires that statements regarding illicitly removed material be incorporated into the acquisition policy of every registered museum in the UK. These statements are based on the MA Code of Practice. In addition procedures must be in place to try and establish, as far as possible, title and provenance.

4.2 ACQUISITIONS

Museums acquisitions might be active or passive. Passive collecting is when museums acquire material by gift or bequest; they acquire more actively through purchase or fieldwork. No matter what the method of acquisition it should conform to guidelines laid down in the acquisitions policy which, in registered museums in the UK, must include ethical statements with regard to collecting unprovenanced material (see above). Enquiries made during the preparation of this report suggest that many UK museums do turn down potential acquisitions because of the ethical guidelines described above. Reasons range from dissatisfaction with the documentation, to suspicions of illegal exportation, or 'it just didn't feel right'.

- One museum, for instance, has reported an object presently on offer in the United Kingdom, with an export licence from an intermediary country, but not from the country of origin. The museum has refrained from buying the object for the time being and is trying to ascertain (with great difficulty) the export rules of the country of origin. This is obviously a correct ethical position, even though the museum stands to lose an important acquisition.
- Another museum has drawn attention to the problem of fake documentation. Specifically, it had declined to purchase a terracotta object, accompanied by what appeared to be a genuine export licence, because the licence in question had been issued in contravention of the export laws of the country in question.

Acquisition policies: necessary loopholes

However, the case for or against acquisition is not always clear cut. Acquisition policies contain areas of uncertainty – 'necessary loopholes' – to allow curators to use their experience and personal judgement in difficult cases.

The Policy Statement on the Acquisition of Antiquities by the Trustees of the British Museum (1998), for instance, states that the British Museum deplores the looting of antiquities for the market, and refuses to acquire objects that have been illegally excavated and/or exported:

'Wherever possible the Trustees will only acquire those objects that have documentation to show that they were exported from their country of origin before 1970 and this policy will apply to all objects of major importance.'

But it goes on to say: 'The Trustees recognise, however, that in practice many minor antiquities that are legitimately on the market are not accompanied by detailed documentary history or proof of origin and they reserve the right for the museum's curators to use their best judgement as to whether such antiquities should be recommended for acquisition. In doing so the staff of the British Museum will at all times abide by the spirit of the Codes of Ethics of the International Council of Museums and the Museums Association'.

In addition the Trustees: 'recognise the principle that regional and national museums must sometimes act as repositories of last resort for antiquities originating within their areas of responsibility, and they will on occasion approve the acquisition of antiquities without documented provenance where it can reliably be inferred that they originated within the United Kingdom, and where such payment as may be made is not likely to encourage illicit excavation'.

Museums of Last Resort

The argument that a museum must be the repository of last resort was used to justify the purchase by the British Museum of the Salisbury Hoard (see Section 2.6), when pieces first began to appear on the market, but before its provenance or true nature was known. It was obviously an important collection and the overriding wish was to preserve it intact (as far as possible) so as to make it available for study and public display, and to prevent its dispersal and loss abroad. Thus the British Museum moved to buy it.

When smaller museums try to follow suit they may soon run into difficulties. Their acquisition policies give them the responsibility to collect archaeological material from a specific area, but their acquisition budgets are often very limited. With the present popularity of treasure hunting as a hobby they may be faced with an enormous range of material, much of which might have no secure provenance, yet is seen to be of regional or local significance. The museum then has to choose whether to buy the best pieces and let associated material go, or to buy nothing. If the former course of action is chosen then the museum risks being criticised for encouraging illicit excavation and 'cherry-picking' yet, in principle, the policy is the same as that of the British Museum.

There is a conflict here between principle and practice and there is a danger that smaller museums may be criticised for adopting an acquisition policy which is identical to that of larger museums, but which cannot be properly implemented because of limited resources. Clearly, the argument of 'last resort' is in need of some clarification.

Minor Acquisitions

The British Museum's acquisition policy also makes provision for the purchase of undocumented or unprovenanced minor antiquities at the curator's discretion. Again, there is a need for some clarification here. What is a 'minor antiquity'? What type of objects suitable for purchase by the British Museum are in fact without any known history? How many objects of this type are likely to surface? Where do they come from? This exemption might need to be reviewed as its implementation becomes clearer in practice.

The 'Rosetta Stone Dilemma'

The primary objection to the illicit trade is that it encourages looting, which destroys contextual information, and in so doing causes a loss of knowledge. But sometimes it can be argued that an object with no provenance is important in itself, and that there would be a loss of knowledge if a museum failed to acquire it so that it was instead lost to view in a private collection. Such an argument has recently been put forward to justify the purchase by a US museum of unprovenanced Attic vases – that they are important works of art. An extreme example of this type of argument has been characterised by archaeologists as the Rosetta Stone dilemma.

The Rosetta Stone holds a bilingual inscription and was discovered during Napoleon's campaign in Egypt. It is now in the British Museum. The languages are Egyptian and Greek and their coincidence on the stone enabled Champollion to decipher the Egyptian hieroglyphic script. A pivotal moment in the annals of Egyptology. Now imagine a curator in a museum confronted with a rather shady dealer offering a similar opportunity, a stone with two languages, one known and one unknown. The provenance is impeccable of course – an old Swiss collection. What should the curator do? Buy the piece and in so doing break all ethical codes and encourage further looting; or send the dealer away so that the piece is lost from scholarly view?

A similar dilemma has recently arisen with the discovery of fossilised dinosaur eggs in southern China, some of which still contain embryos. Chinese law prohibits the export of such material and as the eggs were only discovered in 1957 any egg now in the west is an illegal export, and as such would constitute an unethical museum purchase. Should these eggs be ignored and left to the vagaries of the private market? Or should they be bought and studied?

One possible resolution of this dilemma might lie in distinguishing between qualitative and quantitative additions to a presently established body of knowledge. Thus the Rosetta Stone opened up a whole new field of study, it provided the basis for a qualitative extension of historical knowledge. Perhaps the dinosaur eggs might do the same? An Attic vase does not. It is an addition to the corpus, one more pot, it does not open up a new field of study.

The Rosetta Stone dilemma is interesting but not one of great practical import. The number of Rosetta Stones can be counted on one finger, and the number of equivalent items on the fingers of one hand. The vast majority of unprovenanced objects are just not in this class. They appeal to the collecting instinct – the missing piece – but their acquisition cannot be justified on the grounds of intrinsic importance.

4.3 BREAKING THE CODES

Brent Benjamin, deputy director for curatorial affairs at the Boston Museum of Fine Arts, has acknowledged that museum acquisition of unprovenanced artefacts 'is potentially a contributing factor' to looting.²² So, why do some museums still acquire objects in contravention of these codes of ethics? Martin Sullivan, chairman of the U S State Department's Cultural Property Advisory Committee says, 'There is still a prevailing feeling in the museum world that museums need to make spectacular additions, no matter how much they already own. This is a very competitive industry and spectacular new things mean more visitors.'²³

Disregard

It is clear that some museums continue to disregard codes of professional ethics:

- The Boston Museum of Fine Arts was recently accused of acquiring looted artefacts after having committed itself in 1983 to an ethical acquisitions policy. Among the 71 objects identified were numerous Apulian vessels, marble busts, a Greek vase from Tuscany and a rare Mycenaean terracotta figurine.
- In 1997 the Miho Museum in Japan opened its doors to the public. Funded by the Shinji Shumeikai religious organisation, the museum's collection is largely of Japanese origin although there is a substantial holding of objects from other East Asian countries, as well as from the Middle Eastern and Mediterranean areas. These latter antiquities have been acquired over the last seven years and are largely without provenance. Inevitably, the authenticity of certain objects has been called into question.

Bequests and donations

Ethical codes state that the same standards should be applied to bequests and donations, as to purchased acquisitions. But as one museum director commented recently, 'It is much harder to resist... temptation when you are presented with an object that might transform your collection or, in the case of the MFA [Boston Museum of Fine Arts], when it comes from one of your major benefactors.'²⁴ However, bequests and donations of unprovenanced material can prove to be very expensive acquisitions in public relations and financial terms:

- In 1996 a collection of allegedly looted Mayan pottery was given to the Boston Museum of Fine Arts by trustee Landon T Clay. The museum paid an estimated

£30,000 for a legal review of the Pre-Columbian collection which concluded that there was no reason for the MFA not to take it. The MFA turned aside a public demand from the government of Guatemala to return the objects. In 1998 the Guatemalan government hired two attorneys with a successful track record in similar cases to seek restitution of their property. A similar storm is brewing over the acquisition of undocumented Italian pieces including some seventh-century BC cups from burial grounds near Rome that 'raised suspicions at the MFA, but were nonetheless accepted in 1996 – a gift from a long-time overseer'.²⁵

- In the United States, dealers seeking tax deductions often donate artefacts to museums they sell objects to. The MFA's list of donor-dealers, according to the *Boston Globe*, 'amounts to a "who's-who" of dealers, and some collectors, who have been involved in controversy over the origin of some of their acquisitions.'²⁶ There is increasing unease that collectors and dealers should obtain tax relief on the basis of 'charitable donations' of unprovenanced antiquities, and pertinent questions are being asked as to why American tax-payers dollars should be used to reward a dealer or collector in such artefacts. This may not seem directly relevant to the British situation, but is well worth noting in relation to the tax-in-lieu scheme for inheritance tax (see Recommendations for HM Government).
- 316 rare Native American artefacts were recently donated to the Nevada State Museum in Carson City, by the mother of collector Stephan Mueller (now deceased). It emerged that they were apparently removed illegally from federal lands in remote areas of Utah and Nevada. Mueller's mother vanished and the museum was left holding the material.
- In 1990 the Metropolitan Museum of Fine Art, New York mounted an exhibition of Andean four-cornered hats from a private collection. In the catalogue museum director Philippe de Montebello acknowledged that these objects 'covered new territory in the field' and, to the dismay of Peruvian archaeologists, expressed deep appreciation for their promised donation to the museum.

4.4 MUSEUMS AND THE MARKET

Museums need the market. As the Boston Museum of Fine Arts argued back in the 1970s, it was not equipped to carry through its own field projects and thus was reliant on the market for the continuing expansion of its collections. A similar point was recently made in the United Kingdom when it was argued that museum geologists are often poorly equipped for fieldwork, and perhaps not even trained for it, so that they are dependent on commercial sources for new specimens.

British museums continue to maintain a presence in the market, although their purchasing power cannot rival that of their American and Japanese counterparts, or indeed the wealthy private collectors.

Dealers and auction houses, when questioned, cannot reveal any hard figures, but research for this report suggests that sales to British museums account for only a very small proportion of their total turnover. Museums agree. Cuts in purchasing budgets have had their effect. The annual reports of the major funding organisations again confirm the picture of low-level activity.

Nevertheless, it is clear from the material presented in this report that there are both legal and ethical issues for museums to bear in mind when buying any object on the open market.

- They are unlikely to face prosecution for the inadvertent purchase of stolen material, but they might have to give it up and lose the purchase price. The Salisbury Hoard (see Section 2.6) cost the British Museum £55,000.

- Members of governing bodies could find themselves personally responsible for any financial loss to the museum.
- There are also ethical considerations. It is clear that although much of the material appearing on the market with reputable dealers is legally traded under English law, the method of its first acquisition may well have been destructive and quite probably illegal in the country of origin.
- There is a fair chance that material without a verifiable provenance might be fake.

4.5 DUE DILIGENCE

One problem with codes of ethics is that they do not lay down clear procedures that museums should follow when investigating the status of a potential acquisition. Colin Renfrew has argued that 'many museums take the weakest possible interpretation, avoiding only acquisitions which can positively be shown to be looted'.²⁷

The British Museum's policy requiring that objects should have 'documentation to show that they were exported from their country of origin before 1970' is, in this regard, less open to weak interpretation by museums than the equivalent statement in the ICOM code that a museum must be 'satisfied' that an object 'has not been acquired in, or exported from, its country of origin... in violation of that country's laws'.

Apparently weak interpretations include:

- In 1996, only months after announcing that they would only acquire classical antiquities 'with a well-documented provenance' the J Paul Getty acquired, through gift and purchase, the \$80 million Fleischman Collection. Most of the pieces in the collection are of unknown origin. Yet, according to Marion True, the museum's curator of antiquities, this acquisition was fully in accordance with the new ethical acquisition policy since the museum interprets 'well-established provenance' to mean an established record of possession *documented* before November 1995. Ironically this published record was a catalogue written when the collection was exhibited by the J Paul Getty Museum itself and the Cleveland Museum of Art in 1994 and 1995. The museum apparently refused pieces that the Fleischmans had bought since then but has already felt obliged to return one of the Fleischman pieces to Italy when it was shown to have been stolen (see Section 4.7).

'Due diligence' is a term now entering common currency to describe the measures that an individual or institution can reasonably be expected to take when checking the pedigree of a potential purchase.

- Is it legally on the market?
- Was its original acquisition illegal or in any way destructive?

The somewhat hazy concept of due diligence has slowly evolved over the past ten years and acquired better definition after the judgement in Indiana on the return of the Kanakariá mosaic fragments to Cyprus (see box feature), the drafting of the 1995 Unidroit Convention (where demonstration of due diligence at time of purchase is a necessary prerequisite of compensation should a stolen object be reclaimed), and the EU Money Laundering Directive of 1991 which imposed statutory regulation on the financial sector, but which has influenced the voluntary codes of due diligence for art dealers and auctioneers launched in 1999 by the Council for the Prevention of Art Theft (CoPAT).

Unidroit

The set of recommendations for the exercise of due diligence in transactions involving cultural material made in Article 4(4) of the 1995 Unidroit Convention have been particularly influential:

'In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any step that a reasonable person would have taken in the circumstances.'

Lyndel Prott of UNESCO has discussed this article in some detail²⁸. When considering the circumstances of the acquisition regard should be paid to the place and time of transfer (midnight on the waterfront is obviously suspect) and the type of packaging (straw and old socks in a disintegrating cardboard box are more suspicious than a professionally packed parcel). Objects from areas known to have recently been heavily looted (eg. Cambodia, Mali, Afghan/Pakistan border, Latin America, etc), must be suspect, and more rigorous investigation of their original acquisition is called for. Newly surfaced examples of some classes of material can be presumed to be illicit (eg. Cycladic figurines, Nigerian Nok terracottas, Chinese dinosaur eggs, Apulian vases, etc).

It is safer to buy from a dealer or, better still, a dealer with whom a regular relationship is maintained but, even then, as Elisabeth des Portes, former secretary general of ICOM, has said: 'It is evident that one can no longer rely on the fame of certain salerooms or dealers for assurance of the provenance of objects.'²⁹

Simple checks with registers or databases of stolen art (such as the Art Loss Register) are useful and should always be undertaken. However, illegally removed, and therefore previously unknown material quite obviously cannot be listed. It is encouraging that some museums now write to the authorities of putative countries of origin. But again this is not enough, since there is no guarantee that the request will reach the right person and again, in any case, experts often cannot identify with any degree of certainty previously unseen material. It is certainly worth checking an object with the Art Loss Register, and the probable country of origin, but museums should be aware that this does not give an object 'a clean bill of health'.

Dealers and Auctioneers

The two 1999 Council for the Prevention of Art Theft (CoPAT) codes of due diligence were introduced to protect honest dealers and auctioneers from the activities of thieves and their accomplices, and to impede the free flow of stolen material through the market. They are also of relevance to museums. The dealers' code recommends that dealers endeavour to:

- Request a vendor to provide their name and address and to sign a form identifying the item for sale and confirming that it is the unencumbered property of the vendor and they are authorised to sell it, and this form will be dated.
- Verify the identity and address of new vendors and record the details.
- Be suspicious of any item whose asking price does not equate to its market value.
- If there is reason to believe an item may be stolen:
 - a) Attempt to retain the item while enquiries are made.
 - b) Contact the officer with responsibility for art and antiques within the local police force area.

- c) Check with relevant stolen property registers.
 - d) Pass to the police any information which may help to identify the person(s) in possession of such items.
 - e) If still uncertain, refuse to buy, sell or value it.
- If requested, submit catalogues to the officer with responsibility for art and antiques within the local police force area.
 - Look critically at any instance when requested to pay in cash and avoid doing so unless there is a strong and reputable reason to the contrary. In the absence of such a reason, pay by cheque or other method that provides an audit trail.
 - Be aware of money laundering regulations.
 - Appoint a senior member of staff to whom employees can report suspicious activities.
 - Ensure that all staff are aware of their responsibilities in respect of the above.

The codes draw attention to money laundering regulations, in particular the requirement to record and verify vendors, and the need to create an audit trail which may be followed by investigating police officers. It is a weakness of the codes, however, that there is no requirement to record and verify the identity of buyers, so that the trail is lost at point of purchase.

Museums

Increasingly museums are expected to be diligent when enquiring into the origin of a potential acquisition. The Museums Association publishes *Buying in the Market: a Checklist for Museums*, which sets out procedures to be followed when making a purchase and usefully emphasises the advice *caveat emptor* – buyer beware. Further guidance for museums on due diligence is included in this report (see below).

Museums buy from private owners, dealers and auction houses. As regards dealers, the situation seems clear. Any purchase should be accompanied by full and proper documentation, including, critically, any relevant export licences from the country of origin. The situation as regards auction houses is more problematical. It should, by now, be clear that the appearance of an object in the saleroom of a major auction house is no guarantee of its good pedigree. It may be on the market legally, but if there is not an easily verifiable provenance it should be regarded as suspect. Museums generally seem to be aware of the need not to purchase unprovenanced material when it is recognised as archaeological, but attitudes are less secure when pieces are labelled as art. Most British material purchased through auction seems to be metal detector finds, often ones that have passed through a Treasure inquest. There is little or no evidence to suggest that the manner of their acquisition was illegal, although the case of the Salisbury Hoard should warn against complacency. But Asian antiquities without published provenances continue to be bought by some UK museums. Unless good evidence of the history and means of first acquisition of an object is forthcoming it should be avoided. It could be fake, or stolen, or illegally exported, and might contravene ICOM and MA codes of ethics.

Due diligence is an indispensable procedure to be followed for any acquisition. Attaining and maintaining an acceptable standard of diligence are time consuming activities, and expensive, and it is tempting to take short cuts. But failure to adequately check the provenance of an acquisition could result in an embarrassing and expensive mistake. The cost of diligence procedures is effectively a hidden cost of the trade, entailed by their unethical practices, and one passed on to museums.

Museums generally seem to be aware of the need not to purchase unprovenanced material when it is recognised as archaeological, but attitudes are less secure when pieces are labelled as art

DUE DILIGENCE GUIDELINES FOR MUSEUMS

When considering acquiring an object, there several precautions that a museum should take to avoid acquiring looted material.

Museums are, in general, advised to avoid acquiring any object which has no secure ownership history, unless there is reliable documentation to show that it was exported from its country of origin before 1970.

The following steps can be useful in establishing a provenance or reconstructing an ownership history. However in some cases it will prove impossible to establish a secure provenance, in which case acquisition should be avoided unless specific written permission is officially granted by the authorities in the country of origin.

- Ask for proof of the means of original acquisition, preferably an export licence from the country of origin.
- If it seems likely that the object was removed from its country of origin a long time ago, ask for documentary evidence of its ownership history, or of any publication in a reputable source.
- Write to appropriate authorities in the country of origin to ask for further information and advice.
- Contact colleagues who are likely to have a reliable and informed opinion about the status of the object or the character of the vendor.
- Beware fake documentation.
- Be cautious. Do not proceed with an acquisition unless you are sure it is legitimate and can prove to others that it is so.

Specialist resources

Various resources have been compiled to list known illicit items. These might help a museum reject a potential acquisition. However, they are of limited value for the types of material considered in this report, since illegally excavated or undocumented objects cannot be listed.

- The Art Loss Register and equivalent databases of stolen material
- The duplicate catalogue for the Kabul Museum held at Musée Guimet and that of the Angkor Conservation Centre held at the Ecole Française de l'Extrême Orient
- Academic publications such as those of Christopher Chippindale and David Gill on Cycladic figurines
- US State Department web site International Cultural Property Protection at <http://exchanges.state.gov/education/culprop/>
- Museum Security Network at <http://www.museum-security.org/>
- ICOM publishes three books which catalogue material known to be stolen from Cambodia, Latin America and Africa. Titled respectively: *Looting in Angkor*, *Looting in Latin America* and *Looting in Africa*, each book contains descriptions of only 100 objects so obviously they are not comprehensive, but nevertheless the publication of the first edition of *Looting in Angkor* led to the identification of six pieces, two in the collections of US museums. Further books are in preparation.
- For Nepal there is Jürgen Schick's *The Gods are Leaving the Country*, which contains a photographic record of the country's Buddhist and Hindu sculpture which has now largely disappeared.

4.6 EXHIBITIONS AND LOANS

Just as MFA curator Brent Benjamin acknowledged that acquiring illicit antiquities may be a contributory factor to looting (see above), Boubé Gado, head of art and antiquities at the University of Niamey, Niger has argued that exhibiting fashionably collectable material also 'whets the appetite and greed of international art traffickers'³⁰. He noticed that during the showing of the long-running *Vallées du Niger* exhibition in Paris, a wider public became aware of the aesthetic appeal and value of Bura statues and unauthorised excavations occurred in Niger at an unprecedented rate. A survey in *The Art Newspaper* recently revealed antiquities dealers' unanimous belief that museum exhibitions play an important role in raising visibility and sparking interest in specific classes of object and also in nurturing private collections.³¹

Exhibiting

Exhibiting illicit material can generate as much bad publicity and professional ill will as acquiring it.

- In 1994 The Royal Academy displayed the antiquities collection of George Ortiz, defending its decision to do so on the grounds that their responsibility was to display great art. Since most of the beautiful works on show were without a verifiable provenance the exhibition generated controversy. Eminent archaeologist Colin Renfrew, in an article in *the Guardian*³², commented that while the exhibition delighted the eye, it also raised troubling questions for the visitor: 'Perhaps it should for the Royal Academy as well.' Indeed, should the Department of National Heritage (now the Department for Culture, Media and Sport) underwrite the insurance for such an exhibition through the government indemnity system?
- In 1995, also at the Royal Academy, the exhibition '*Africa: the art of a continent*' ran into unexpected difficulties when the British Museum, other institutions and scholars questioned the Royal Academy's decision to borrow from private collectors and show illegally exported terracotta figurines from Mali and Nigeria. A number of museums decided to withhold objects they planned to lend for the exhibition unless the African governments concerned consented to the display of the looted pieces. Although the Royal Academy subsequently undertook to exclude from display any items that would contravene the 1970 UNESCO Convention or relevant national legislations, the scholarly community was dismayed when the looted terracottas were shown as back-lit images in the gallery, and included without qualification in the catalogue. The only unattributed captions in the exhibition related to the disputed material. After the exhibition opened and following negative publicity regarding the looted pieces, a photo display and video with information about looting were added to the exhibition (see Section 4.9).

Lending

Lending illicit material can also bring problems:

- 1999: The major exhibition, *The Maya*, transferred from Venice's Palazzo Grassi to Mexico without some of its exhibits. The artefacts, originally removed illegally from Mexico, were reportedly withdrawn by European museum curators who believed the Mexican government could stop them leaving Mexico again.

4.7 NEW APPROACHES

Museums have bypassed many of the problems discussed above by experimenting with new ways of adding to their collections or displays, usually most successful when they

develop partnerships with people whose histories and cultures they represent. These new approaches often represent a move away from outright ownership, and there is a growing realisation that the best way forward for museums that don't want to encourage the illicit trade may be ambitious programmes of inter-museum loans. However, as Martin Sullivan said recently: 'Too many museums are still thinking in terms of ownership... Museums started out being institutions for the preservation of cultural heritage. We have to get back to that – and find some new ways to do it.'³³

- The British Museum is funding the conservation of several statues from 'Ain Ghazal, in Jordan in exchange for which, at the end of the project, the museum will be allocated one large figure and one small bust. Selection of the two pieces will be by negotiation between the British Museum and the Jordanian Department of Antiquities.
- University of Cambridge Museum of Archaeology and Anthropology relies on the assistance of indigenous people in field-based research. In 1994 they worked in collaboration with Gurung shaman Yarjung Kromchhain Tamu to collect Nepalese items for the museum, including costumes and ritual objects. Yarjung made the final decision on objects to be collected and he advised on their display. For spiritual reasons it was important for the objects to be kept together and anti-pest treatments were taboo, so the museum departed from its usual classification, treatment and storage systems and did not formally accession all of the objects.
- The J Paul Getty Museum has instigated an exchange of skills for exhibition pieces. In return for conserving sculptures from the Pergamon Museum in Berlin, they are able to retain them for two years on loan for display before returning them home.

2nd-century AD copy of a head of Diadoumenos returned to Italy by the J Paul Getty Museum in 1999

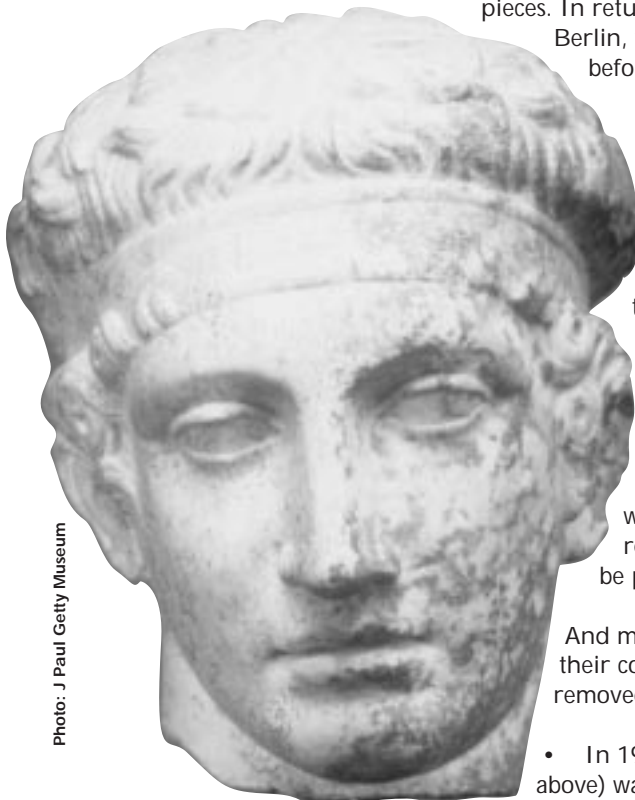


Photo: J Paul Getty Museum

- In 1993 an unprovenanced Roman sarcophagus, of a type made in Athens, was offered to the J Paul Getty Museum by a private collector in New York. Following their stated due diligence policy, the museum circulated photographs and requests for information about the piece to the governments of Greece, Italy and Turkey. The Turkish government objected to the acquisition on the ground that the sarcophagus may have been illicitly exported from Turkey. Two years' investigation failed to throw any light on its origin, so in the interests of keeping this important object accessible to the public and scholars, the Turkish authorities and the museum struck an unusual deal which was written into the acquisition terms in 1995. The museum bought and displays the piece but, should any evidence emerge in future which proves it was illegally removed from Turkey, it will be returned immediately at the Getty's expense. This deal would not be possible under the museum's new, self-imposed acquisition rules.

And museums are going further. Objects are steadily being returned to their countries of origin when it is proven that they were illegally removed.

- In 1999 a piece from the controversial Fleischman collection (see above) was one of three objects that the J Paul Getty Museum returned voluntarily to Italy. It had been stolen from an excavation storeroom.
- Denver Art Museum recently gave back to Guatemala a carved wooden lintel stolen from a Mayan pyramid temple in the Petén between 1966-68, even though it was purchased by the museum before US legislation prohibiting the importation of Pre-Columbian art.

4.8 PR, SPONSORSHIP AND MARKETING

In an increasingly market-driven world, museums can sometimes appear to tolerate the trade of unprovenanced objects through inappropriate or compromising collaborations with dealers or collectors. Thus PR, sponsorship and marketing enterprises can also blur ethical boundaries:

- In 1998 the St Louis Art Museum planned to hold a sale of ancient jewellery in conjunction with an exhibition of ancient gold from Thrace. Some of the pieces for sale were described by the fashion editor of the *St Louis Post-Dispatch* as very wearable. They ranged in price up to \$50,000 and the sale proceeds would have been shared by the museum. It was clear that the provenance documentation was inadequate to demonstrate compliance with 1970 UNESCO Convention standards. Claire Lyons of the Archaeological Institute of America initiated a campaign which halted the sale, and the museum was complimented by the AIA for its swift and considerate – and ethical – response.
- The journal of the British Museum Society has been criticised for accepting advertisements from dealers featuring unprovenanced Gandharan antiquities.
- Asian Art Week London, designed to celebrate the city's ample offerings for the Asian art collector and enthusiast, is described by the promotional literature as 'a collaboration' between London's major auction houses and several museums. Some objects in the sales were promoted as 'fresh to the market'.

4.9 EDUCATION

In his Keynote speech at the Museums Association Conference in 1998³⁴ Manus Brinkman, secretary general of ICOM, identified lack of public awareness of the illicit trade in cultural property as a key issue (see also the Foreword to this report). Museums are ideally placed to help raise levels of public awareness.

Tourist tales

There is certainly a very practical need for public education. Very few people in the United Kingdom, for instance, realise that it is usually illegal to export cultural objects from their country of origin without a licence, or at all. Culture-hungry tourists, just the type that visit museums and galleries, are increasingly exposed to the illicit trade:

- In Mexico a young Canadian bought 20 small figurines from a local man, unaware that he had broken Mexican law. After asking agents at a police road block whether they thought the hoard genuine he was charged with theft and jailed for more than six months, only to be freed after a hunger strike protest.
- Also in Mexico, when tourists alerted authorities after having been offered artefacts for sale at the roadside, the police were able to rescue 39 antiquities looted from the famous site of Teotihuacan.
- Three German tourists were arrested in Sienna, Italy, given six-month suspended sentences and fined £150 each for taking bricks stamped with heraldic emblems from a Renaissance palazzo undergoing restoration.
- The anti-looting exhibition *Archaeology: Reality and Concerns* mounted in Jordan (see below), included a collection returned to the Antiquities Department by an American who had purchased them unknowingly from an illegal source.

The excavators of Sipán use educational materials like this children's comic book to tackle looting issues

Museum education programmes in source countries

There are many examples of museum-based educational programmes designed to educate museum visitors in source countries about the scale and effects of the illicit trade. Here are just a few examples:

- The 'Lord of Sipán' exhibition, which toured internationally and recently relocated from Lima to Lambayeque in Peru, tells not only the story of the excavation of the fabulously rich tombs (originally found by looters) but also the problems and loss to knowledge caused by looting. In the museum shop comic books, CD-ROMs and other educational material is available which explains the issues to children, tourists and the general public and encourages them to preserve their archaeological heritage.



An archaeologist explains to Malian villagers the importance of context

Photo: Dr Kevin MacDonald

- The National Museum of Mali, among other initiatives has run a poster campaign with the strapline: 'protect archaeological sites; and you thereby save your history'.
- The Antiquities Department in Jordan in 1998 staged a touring exhibition 'Archaeology: Reality and Concerns' informing the public about the extent of the problem, exhibiting stolen artefacts and letting visitors know their role in preventing such crimes in the future.
- An exhibition is currently touring museums in Italy, highlighting the theft of ancient vases and the archaeological destruction it causes.

Museum education programmes in the UK

In the United Kingdom, higher degrees and diplomas in Museum Studies in particular have made an impact by raising staff awareness of the problems caused by the illicit trade and of the relevant legislation, conventions and ethical codes. But there are virtually no examples of these issues being explained to the general public.

- In 1995 The Royal Academy did display a series of photo-panels showing the advantages of archaeology as opposed to looting at Djenné-Djeno in Mali alongside *Africa: Art of a Continent*, and also ran the anti-looting video *The African King*. But these panels were only added to the exhibition after the controversy described above (see Section 4.6).
- The Illicit Antiquities Research Centre, Cambridge with support from the Leventis Foundation have produced a portable display. The exhibit explains the basic issues and highlights famous case studies from around the world. It is available on loan, free of charge to museums, libraries and suitable institutions.

In his 1998 speech, Manus Brinkman suggested that 'museums could pay more attention to the illicit traffic in their communication and educational programmes.'³⁵ Unlike museums in source countries, UK museums seem unwilling to do that. This is partly because they do not feel it is relevant and often because they perceive looting as too negative a story to tell unless there is a reason to do so, as in the case of the Royal Academy exhibition. However, members of the public are usually shocked when they learn about the illicit trade and the epidemic proportions that looting has reached. They ask what is being done to stop it. There is perhaps a public concern that is not being properly addressed.

Photo: Proyecto Tumbas Reales de Sipán

Museum displays

Section 2.8 of the ICOM Code of Professional Ethics states that: *'The museum should seek to ensure that information in displays and exhibitions is honest and objective and does not perpetuate myths or stereotypes.'*

- How many displays of Cycladic figurines around the country tell the story of looting and the possibility of a faked corpus?
- How many displays at museum exhibitions promoting Asian Art Week (see above) told the parallel story of epidemic looting and destruction?

There is clearly a need for museums to rethink their policies and practices on the display of unprovenanced material.

Everyone concerned about the illicit trade in cultural material emphasises that it is crucial to get across the importance of *context, context, context*. Museum collections are the ideal vehicle to transmit this message and the importance of context should be emphasised wherever possible.

- A recent exhibition of ancient and not so ancient fakes at the Fitzwilliam Museum, Cambridge discussed various methods of establishing whether an object is real – from science to connoisseurship – but omitted to mention that if the findspot of an object is known with certainty its authenticity is not in doubt and scientific tests are unnecessary.

4.10 RECOMMENDATIONS FOR MUSEUM ORGANISATIONS

Codes of practice in practice

Museum workers in the United Kingdom are increasingly aware of the illicit trade in cultural material and most attempt to maintain an ethical position. But adhering to the guidelines set out in the various codes of practice and ethics is not simple. The opacity and complications of the illicit trade can frustrate even the most conscientious curator. Restraints on time and money can make the implementation of thorough due diligence procedures seem a costly luxury, although the cost of making a mistake may be far higher in terms of both money and public relations. Often the expertise needed to distinguish between licit or illicit material is not available and advice or information is not readily accessible. An isolated curator is no match for the trade.

Recommendations

Museum organisations have a role to play here in supporting museums. In particular:

1. A central advisory point should be set up to advise museums about the necessary export documentation needed to establish that an item has not been exported illegally and to make available the export legislation of all countries. (UNESCO holds copies of relevant legislations from all states party to the 1970 Convention but, in general, such information and advice on its interpretation is difficult to come by.)
2. Within the museum community there are informal networks of communication. However, these are of limited benefit as many curators are unaware of them. It would be helpful if a central register of advisers could be established so that, for instance, if information was needed about a particular palaeontological specimen a curator could approach the geology adviser, who could then direct the query to the most suitable authority.
3. The 'museum of last resort' argument (see Section 4.2) seems to impose a responsibility without at the same time providing clear guidance. The Museums Association, or Society of Museum Archaeologists, should formulate a set of guidelines

to be used by museums with small acquisitions budgets that are faced with large quantities of unprovenanced material brought to their attention by treasure hunters.

4.11 RECOMMENDATIONS FOR MUSEUMS

The ICOM and Museums Association codes of ethics require that museums should not accept on loan, acquire, exhibit, or assist the current possessor of, any object that has been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in contravention of that country's laws. This is also a requirement of the guidelines for the Registration Scheme for museums in the UK. In practice this means that museums should observe the following (and address appropriate points in their acquisition policies):

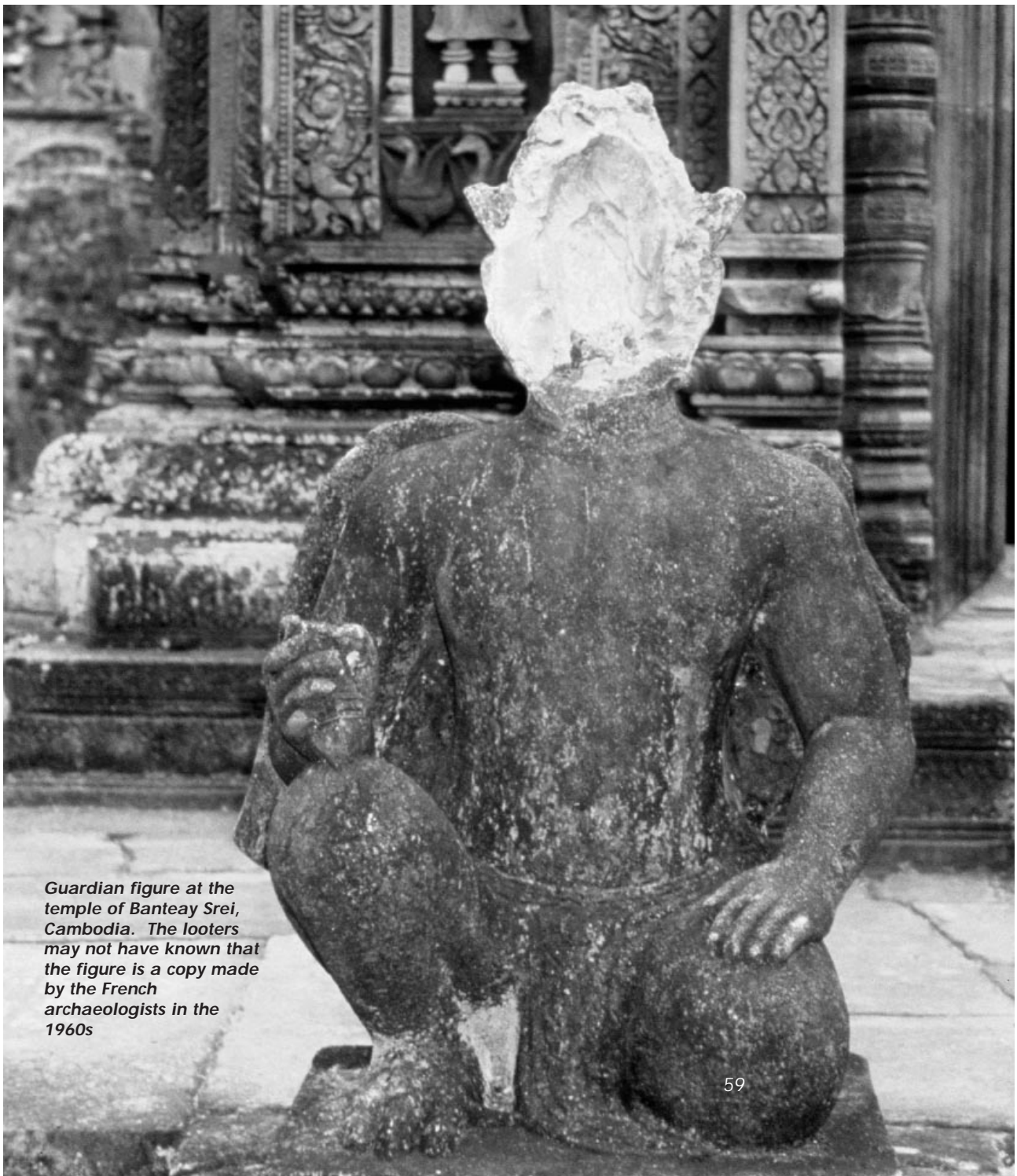
1. Museums should not acquire provenanced items whose accompanying documentation fails to comply with the export regulations of their country of origin, unless there is reliable documentation to show that they were exported from their country of origin before 1970.
2. Museums should not acquire unprovenanced items because of the strong risk that they have been looted, unless they are following the 'last resort' argument outlined in Section 4.2 or there is reliable documentation to show that they were exported from their country of origin before 1970.
3. Museums should follow the guidelines on due diligence set out in this report, which should be addressed in their acquisition policies.
4. Museums should apply the same strict rules to gifts and bequests and loans as they do to purchases.
5. Museums should avoid appearing to promote or tolerate the sale of unprovenanced material through inappropriate or compromising collaborations with dealers.
6. Museums should decline to offer expertise on, or otherwise assist the current possessor of, unprovenanced items because of the risk that they may have been looted.
7. Museums should inform the appropriate authorities if they have reason to suspect an item has been illicitly obtained.
8. Museums should comply with the 1970 UNESCO and 1995 Unidroit conventions, if legally free to do so.
9. Museums should seize opportunities to raise public awareness of the scale and destructive impact of the illicit trade.

Afterword

Although museums may not be acquiring on the scale that they once were, the market for cultural material has exploded during the last 20 years. Most items are now sold to a growing number of private collectors and spectacular collections containing unprovenanced material have been amassed all over the world. For many of these collectors, having their collection displayed in a museum, or even having it become a museum, is seen as the ultimate validation of their achievement.

In the absence of evidence to the contrary, museums must assume that such collections of unprovenanced items might contain illicit material or even fakes because the collector was no match for the secretive trade.

One day one of these fabulous private collections will be offered to a museum. What is that museum going to do?



Guardian figure at the temple of Banteay Srei, Cambodia. The looters may not have known that the figure is a copy made by the French archaeologists in the 1960s

Acknowledgements

We would like to thank the following individuals and organisations for their help and advice during the preparation of this report: Elizabeth Dell, Tristram Besterman, Patrick Boylan, Manus Brinkman, Anthea Case, Christie's, Maurice Davies, James Ede, Richard Edmonds, Richard Foster, Lynn Gates, Max Hebditch, John Mack, Chris Martin, Stuart Needham, Andrea Rascher, Colin Renfrew, Paul Robinson, Louise Smith, Sotheby's, Ed Southworth, Janet Vitmayer, Richard Warner, Eurwyn William, Hazel Williamson, Mary Yule.

- 1 Hoving, T. 1993. *Making the Mummies Dance*, p. 217.
- 2 *Nature* 23/30 December 1999.
- 3 Quoted in Unfazed by protesters. *The Art Newspaper* No. 99, January 2000.
- 4 Ortiz, G. 1998. The cross-border movement of art: can it and should it be stemmed? *Art Antiquity and Law*, 3, p. 56.
- 5 Tasker, F. Lowbrow art smugglers target a "hot" South Florida market. *Miami Herald*, 19 September 1999.
- 6 Quoted in Meyer, K.E 1974. *The Plundered Past*, p.40.
- 7 Ortiz, G. 1996. *In Pursuit of the Absolute*. Berne: Benteli.
- 8 Quoted in Bianchi, R.S. 1994. Saga of the Getty Kouros. *Archaeology*, 47(3) p. 23
- 9 Chippindale, C and Gill, G. 1995. Cycladic figures: art versus archaeology? In Tubb 1995, p. 134.
- 10 Norman, G. Great sale of the century. *Independent*, 24 November 1990.
- 11 Morrison, C.R. 1995. United Kingdom export policies in relation to antiquities. In Tubb 1995, p. 208.
- 12 Ede, J. 1995. The antiquities trade: towards a more balanced view. In Tubb 1995, p. 211.
- 13 Kirkpatrick, S.D. 1993. *Lords of Sipán*, p. 100.
- 14 Ellis, R. 1995. The antiquities trade: a police perspective. In Tubb 1995, p. 223.
- 15 Hill, C. 1996. Recovering stolen art: practical recovery issues and the role of law enforcement agencies. *Art Antiquity and Law*, 1, p. 288.
- 16 Thornes, R. 1997. *Protecting Cultural Objects in the Global Information Society*. Los Angeles: Getty Information Institute, p. 43.
- 17 Renfrew, A.C. 1999. *Loot, Legitimacy and Ownership: the Ethical Crisis in Archaeology*. Twenty-first Kroon Lecture. Amsterdam: Enschedé, p. 46.
- 18 <http://exchanges.state.gov/education/culprop/>
- 19 Renfrew, A.C. 1999. *Loot, Legitimacy and Ownership: the Ethical Crisis in Archaeology*. Twenty-first Kroon Lecture. Amsterdam: Enschedé, p. 38.
- 20 *Hansard*, 9 February 2000.
- 21 Robinson, W. V. Scholars cite works acquired since 1984. *The Boston Globe*, 27 December 1998.
- 22 Yemma J. & Robinson W. V. Mayan art of questionable origin in Boston Museum. *The Boston Globe*, 3 December 1997.
- 23 Toner, M. Coveting thy neighbor's past. *The Atlanta Journal-Constitution*, 7 November 1999.
- 24 Anthony Herschel, quoted in *Ibid*.
- 25 Robinson, W. V. Scholars cite works acquired since 1984. *The Boston Globe*, 27 December 1998.
- 26 *Ibid*.
- 27 Renfrew, A.C. 1999. *Loot, Legitimacy and Ownership: the Ethical Crisis in Archaeology*. Twenty-first Kroon Lecture. Amsterdam: Enschedé, p. 39.
- 28 Prot, L. V. 1997. *Commentary on the Unidroit Convention*. Leicester: Institute of Art and Law, p. 46ff.
- 29 Quoted in *ibid* p. 49.
- 30 Hynes, N. Looters from hell. *New African*, March 1998.
- 31 Unfazed by protesters. *The Art Newspaper*, No. 99, January 2000.
- 32 Renfrew, C. Justifying an interest in the past. *The Guardian*, 26 January 1994.
- 33 Quoted in Toner, M. Coveting thy neighbor's past. *The Atlanta Journal-Constitution*, 7 November 1999.
- 34 Brinkman, M. The epidemic of theft and robbery: paper presented at the Museums Association conference, Portsmouth, September 1998. *ICOM News*, No. 51. December 1998, p. 2-5.
- 35 *Ibid*. p. 5.

SELECT READING

- Briat, M. & Freedberg, J.A. 1996. *Legal Aspects of International Trade in Art*. The Hague: Kluwer Law International.
- Crowther, P. R. & Wimbledon, W. A., eds. 1988. *The Use and Conservation of Palaeontological Sites*. Special Papers in Palaeontology, No 40. London: The Palaeontological Association.
- Gill, D.W.J. & Chippindale, C. 1993. Material and Intellectual Consequences of Esteem for Cycladic Figures. *American Journal of Archaeology* 97, 601-59.
- Hoving, T. 1993. *Making the Mummies Dance*. New York: Touchstone.
- Kirkpatrick, S. D. 1992. *The Lords of Sipán: A True Story of Pre-Inca Tombs, Archaeology, and Crime*. New York: Henry Holt.
- Leyten, H. (ed) 1995. *Illicit Trade in Cultural Property: Museums against Pillage*. Amsterdam: Royal Tropical Institute.
- Messenger, P. M. 1999. *The Ethics of Collecting Cultural Property*. Albuquerque: University of New Mexico Press.
- Meyer, K. E. 1974. *The Plundered Past: The Traffic in Art Treasures*. London: Readers Union.
- Nudds, J. R. & Pettitt, C. W., eds. 1997. *The Value and Valuation of Natural Science Collections. Proceedings of the International Conference, Manchester, 1995*. London: The Geological Society.
- O'Keefe, P. J. 1997. *Trade in Antiquities: Reducing Destruction and Theft*. London: Archetype and UNESCO.
- Pal H. B. 1992. *The Plunder of Art*. New Delhi: Abhinav.
- Prot, L. V. 1997. *Commentary on the Unidroit Convention*. Leicester: Institute of Art and Law.
- Russell, John M. 1998 *The Final Sack of Nineveh*. Yale: Yale University Press.
- Schick, J. 1998. *The Gods are Leaving the Country*. Bangkok: Orchid Press.
- Stead, I. M. 1998. *The Salisbury Hoard*. Stroud: Tempus.
- Schmidt, P. R. and McIntosh, R. J. (eds) 1996. *Plundering Africa's Past*. Bloomington: Indiana University Press.
- Steiner, C. B. 1994. *African Art In Transit*. Cambridge: Cambridge University Press.
- Tubb, K. W. (ed.) 1995. *Antiquities: Trade or Betrayed*. London: Archetype.
- UNESCO 1997. *Preventing the Illicit Traffic in Cultural Property*. Paris: UNESCO.
- Vitelli, K. D. (ed.) 1996. *Archaeological Ethics*. London: Sage.
- Watson, P. 1997. *Sotheby's: The Inside Story*. London: Bloomsbury.

Journals:

Archaeology
Art, Antiquity and Law
Culture without Context
The International Journal of Cultural Property

For further references and links to other websites visit: <http://www-mcdonald.arch.cam.ac.uk/IARC/home.htm>

DUE DILIGENCE GUIDELINES FOR MUSEUMS

When considering acquiring an object, there several precautions that a museum should take to avoid acquiring looted material.

Museums are, in general, advised to avoid acquiring any object which has no secure ownership history, unless there is reliable documentation to show that it was exported from its country of origin before 1970.

The following steps can be useful in establishing a provenance or reconstructing an ownership history. However in some cases it will prove impossible to establish a secure provenance, in which case acquisition should be avoided unless specific written permission is officially granted by the authorities in the country of origin.

- Ask for proof of the means of original acquisition, preferably an export licence from the country of origin.
- If it seems likely that the object was removed from its country of origin a long time ago, ask for documentary evidence of its ownership history, or of any publication in a reputable source.
- Write to appropriate authorities in the country of origin to ask for further information and advice.
- Contact colleagues who are likely to have a reliable and informed opinion about the status of the object or the character of the vendor.
- Beware fake documentation.
- Be cautious. Do not proceed with an acquisition unless you are sure it is legitimate and can prove to others that it is so.

Specialist resources

Various resources have been compiled to list known illicit items. These might help a museum reject a potential acquisition. However, they are of limited value for the types of material considered in this report, since illegally excavated or undocumented objects cannot be listed.

- The Art Loss Register and equivalent databases of stolen material
- The duplicate catalogue for the Kabul Museum held at Musée Guimet and that of the Angkor Conservation Centre held at the Ecole Française de l'Extrême Orient
- Academic publications such as those of Christopher Chippindale and David Gill on Cycladic figurines
- US State Department web site International Cultural Property Protection at <http://exchanges.state.gov/education/culprop/>
- Museum Security Network at <http://www.museum-security.org/>
- ICOM publishes three books which catalogue material known to be stolen from Cambodia, Latin America and Africa. Titled respectively: *Looting in Angkor*, *Looting in Latin America* and *Looting in Africa*, each book contains descriptions of only 100 objects so obviously they are not comprehensive, but nevertheless the publication of the first edition of *Looting in Angkor* led to the identification of six pieces, two in the collections of US museums. Further books are in preparation.
- For Nepal there is Jürgen Schick's *The Gods are Leaving the Country*, which contains a photographic record of the country's Buddhist and Hindu sculpture which has now largely disappeared.



Photo: David Kennedy

Destroyed Roman mosaic at Zeugma, Turkey, 1990s

This report gives an overview of the destruction wrought by the illicit trade in cultural material. It also looks at the implications for museums and sets out recommendations to the UK government.

Commissioned by

Museums Association

and

ICOM UK

